

Advertisement for Bids

**Cleveland-Cuyahoga County Port Authority
Cleveland, Ohio**

NOTICE IS HERBY GIVEN by the Board of Directors that Sealed Bids will be received by the Cleveland-Cuyahoga County Port Authority for the:

2021 Sediment Processing & Management Facility General Maintenance Project

The successful Bidder will perform the work outlined in the Contract Documents. The work includes the rehabilitation of the existing Sediment Processing & Management Facility's ("SPMF") compacted aggregate roadway network, weir structure maintenance, and other general site maintenance activities.

Bids will be received at the office of the Cleveland-Cuyahoga County Port Authority, Attention: Mr. Nicholas A. LaPointe, 1100 West Ninth Street, Suite 300, Cleveland, Ohio 44113 until 10:00 a.m. local time on July 8th, 2021.

Specifications ("Bid Packets") will be available and may be obtained at the office of the Cleveland-Cuyahoga County Port Authority ("Port Authority") at 1100 West Ninth Street, Suite 300, Cleveland, Ohio 44113 during regular business hours of 9:00 a.m. through 4:00 p.m. or on the Port Authority website: <https://portofcleveland.com/doing-business/>.

There is no pre-bid meeting scheduled for this Project. Escorted site access will be provided on an as scheduled basis with the Port Authority.

Bids must be submitted on the forms furnished in the Bid Packet.

THE PORT AUTHORITY RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS, TO WAIVE ANY TECHNICALITIES, TO REQUEST ADDITIONAL BIDS AND TO OTHERWISE PROCEED IN ACCORDANCE WITH THE BEST INTERESTS OF THE PORT AUTHORITY.

Any Bid may be withdrawn or amended prior to the closing time for the receipt of the Bids. If any Bidder has questions, they should contact Nicholas LaPointe of the Port Authority at 216-377-1342 or Nicholas.LaPointe@portofcleveland.com.

UNDER NO CIRCUMSTANCE WILL THE PORT AUTHORITY BE RESPONSIBLE FOR ANY COSTS INCURRED BY ANY BIDDER IN RESPONDING TO THIS REQUEST FOR BIDS.

The successful Bidder will be required to enter into a contract with the Port Authority based upon the materials submitted and any mutually agreeable negotiations completed between the parties.

Cleveland-Cuyahoga County Port Authority

William D.Friedman
President/CEO

Cleveland-Cuyahoga County Port Authority

Project: 2021 SPMF General Maintenance Project

Bid Deadline: 10:00 a.m. local time on July 8th, 2021

Instruction to Bidders, General Contract
Conditions,
Proposal & Bid Forms, and Form Contract
Agreement

Part A - Instruction to Bidders & Special Conditions

A-1 ADVERTISEMENT

An advertisement for bids for the Project is available in one or more newspapers of general circulation in Cuyahoga County and can be examined, along with the publication dates of said ad, at the office of the Port Authority. Copies of the Specifications can also be viewed on the Port Authority website at <https://portofcleveland.com/doing-business/>. The Project will be advertised for a minimum of 14 days.

A-2 PRE-BID MEETING

There is no pre-bid meeting scheduled for this Project. Escorted site access will be provided as scheduled with the Port Authority. Escorted site access requests shall be made to the attention of Nicholas LaPointe at Nicholas.LaPointe@PortofCleveland.com. No pre-bid questions shall be tendered or responded to during site visits. All questions shall be submitted in writing via email to ensure they are recorded and provided to all interested bidders via Addendums issued prior to bid.

A-3 BID DEADLINE

Sealed bids with the envelope clearly endorsed with the Project's name will be received at the office of the Port Authority, 1100 West Ninth Street, Suite 300, Cleveland, Ohio 44113, until 10:00 am of the Bid opening date and then publicly opened and read. The Bid Opening Date may be extended by the Port Authority if the Port Authority believes good cause exists to do so.

A-4 BID FORM

Every bid must be made upon the blank Bid Forms and each Bidder must fully, truthfully and accurately complete all portions of the Bid Forms. The Bid Forms must acknowledge all Addenda made hereto and failure to acknowledge all Addenda may cause the bid to be considered non-responsive, which may result in the rejection of the bid. Please note, Addenda are official contract documents. Oral representations, statements, explanations or instructions given before the award of the Contract will not be binding upon the Port Authority.

A-5 REVISIONS PRIOR TO BID OPENING DATE

The Port Authority reserves the right to revise or amend this Bid Package, including, without limitation, the specifications and/or drawings, prior to the Bid Opening Date. Such revisions and amendments, if any, will be announced by Addenda on the Port Authority's website. If the revisions and amendments require changes the Port Authority considers material, the Bid Opening Date may be postponed by such number of days as in the opinion of the Port Authority will enable Bidders to respond to the material revisions and amendments.

A-6 DEFINITIONS

The following words, or pronouns used in their stead, shall, wherever they appear in the Contract Documents, be construed as follows, unless a different meaning is clear from the context:

1. "Addendum" or "Addenda" shall mean the additional or modified contract requirements prepared by the Port Authority and issued in writing, by means of drawings, specifications, or both, by the Port Authority prior to the receipt of bids. Addenda are official contract documents which could modify contract requirements during the bid process.
2. "Authorized Representative" shall mean the authorized representative of the Port Authority appointed in the Specifications and Supplemental Conditions or otherwise.
3. "Bidder" shall be any entity submitting a bid.
4. "Bid Form" shall be the blank bid form attached to this Bid Package.
5. "Bid Opening Date" is the date given in the caption of this document unless otherwise altered.
6. "Bid Package" consists of the Advertisement described in A-1, Instructions to Bidders, General Conditions, Specifications and Supplemental Conditions, Bid Form and Form Contract and the documents identified herein and any Addenda issued by the Port Authority prior to Bid Opening Date ("Bid Package").
7. "Change Directive" shall have the meaning given to it in B-31.
8. "Change Order" shall have the meaning given to it in B-31.
9. "Contract" or "Contract Documents" shall mean each of the various parts of the contract referred to in Section B-1, both as a whole and severally, and shall include subsidiary agreements or amendments thereto, if any.
10. "Contractor" shall mean the entity awarded the Contract and its permitted successors.
11. "Contract Drawings" shall mean those identified in Section B-1.
12. "Final Acceptance" shall mean final acceptance of the Work by the Port Authority, as evidenced by the certificate of completion and acceptance executed by the Port Authority, a copy of which shall be sent to the Contractor. Such acceptance shall be deemed to have taken place as of the date so stated in such certificate.
13. "Form Contract" shall be the blank contract form attached to this Bid Package.
14. "Law" or "Laws" shall mean all applicable laws including the Constitutions of the State of Ohio and United States, statutes and regulations of the United States, the State of Ohio or any of its political subdivisions or agencies, resolutions of the Port Authority, and any municipal ordinance, rule or regulation having the force of law which is applicable to the Contract, the Work or the Bid Package.
15. "MARAD" shall mean the U.S. Department of Transportation Maritime Administration.

16. "Materialman" shall mean any entity other than employees of the Contractor, which contracts with the Contractor, or any Subcontractor to fabricate or deliver, or who actually fabricates or delivers, materials, plant, or equipment to be expended, used or incorporated in the Work.
17. "ODOT" shall mean the Ohio Department of Transportation.
18. "President" shall mean the President of the Port Authority.
19. "Port Authority" shall mean the Cleveland-Cuyahoga County Port Authority.
20. "Prospective Bidders" or "Potential Bidders" shall mean all who have, in writing, provided their name, address and facsimile numbers to the Port Authority and specifically stated their interest in the Project.
21. "Site" shall mean the area upon which the Work is to be performed, and such other areas adjacent thereto as may be designated by the Authorized Representative.
22. "Specifications" shall mean all of the directions, requirements, standards of performance applying to the Work as hereinafter detailed.
23. "Standard" shall have the meaning given to it in Section B-18.
24. "Subcontractor" shall mean anyone (other than the Contractor and its employees) who performs work (other than or in addition to the furnishing of materials, plant or equipment) at or about the Site, directly or indirectly for or on behalf of the Contractor (whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services.
25. "Work" shall include the furnishing of all labor, materials, tools, equipment, incidentals, and any other thing necessary or required for the full performance of the Contract by the Contractor.
26. "Workman", "Laborer" or "Workingman" shall mean any employee of the Contractor, or of a Subcontractor, who performs personal labor or personal services at the Site.

A-7 CORRECTNESS OF BIDDING DOCUMENTS

Prospective Bidders shall examine the documents of this Bid Package and note any errors, inconsistencies, omissions, ambiguities or deficiencies bearing on the performance of the Work or the interpretation of the Contract Documents. Upon discovery of any errors, inconsistencies, omissions, ambiguities or deficiencies, Prospective Bidders shall promptly notify the Port Authority in writing and request clarification. The Port Authority is not bound to respond to any such request. The Port Authority will make any corrections it deems necessary to the Contract Documents by issuing an Addendum before the Bid Opening Date.

By placing a Bid, Prospective Bidder waives any claim based on any error, inconsistency, omission, ambiguity or deficiency in the Contract Documents known to it or which could have been reasonably discovered by it.

A-8 NAME OF BIDDER

Each bid must be clearly signed with the full accurate legal name and address of the entity

making the bid and of each person, firm or corporation having a 5% or more interest in it and any fictional business or trade name used by said entity. In case of a partnership, the firm name and address and name and address of each individual partner must be given. In case of a corporation or limited liability company, the title of the officer signing must be stated, and each officer is warranting that it is duly authorized by signing. In case of an individual, use the term "doing business as _____" or "sole owner."

A-9 BIDDER'S AFFIDAVIT

Each Bidder is required to submit with its bid the Port Authority's standard bid affidavit, a copy which is enclosed and available from the Port Authority on request. Contractor shall also familiarize himself/herself with the certifications by which the Contractor is agreeing to or verifying through the signature and submission of a bid.

A-10 BID BOND, CERTIFIED OR CASHIER'S CHECK, LETTER OF CREDIT

Each bid must be accompanied by a bid bond signed by a surety company authorized to do business in Ohio, or by a certified check, cashier's check, or Letter of Credit in the sum of 10% of the amount of the bid. Said bond, check or Letter of Credit shall be security for entry into a contract by Bidder and security for Bidder providing proper security for its performance if the bid is accepted. Any bid bond must be in proper form to establish the surety company's liability to Port Authority, which form is subject to approval by Port Authority's counsel.

A-11 DISPOSITION OF BID BOND, CERTIFIED OR CASHIER'S CHECK, LETTER OF CREDIT

- a. The bid bond, certified or cashier's check, or Letter of Credit shall be forfeited and the principal amount of said bid bond shall be paid to the Port Authority, or said check or Letter of Credit shall be surrendered to the Port Authority as the agreed amount of liquidated damages in case of failure to enter into a Contract. The bid bond, check or Letter of Credit will be released or returned to the Bidder if the bid is rejected.
- b. If the bid is accepted, the bid bond, certified or cashier's check or Letter of Credit will be returned after the form Contract has been signed and the payment and performance bond herein required furnished and approved by the Port Authority. All bid bonds, certified or cashier's checks or Letters of Credit will be retained until Bidder has signed and secured the performance of its Contract. Any Bidder in default of signing and properly securing the Contract awarded to it, shall forfeit the bid bond, certified or cashier's check or Letter of Credit to the Port Authority as liquidated damages. If any or all of the Bidders fail to enter into a Contract or properly secure its performance, the Port Authority may retain any or all of the bid bonds, checks or Letters of Credit of such Bidders so failing and reject all other bids.

A-12 UNACCEPTABLE BIDS

A bid may be rejected in the Port Authority's sole and absolute discretion from any entity that is or was in arrears or is or was in default to the Port Authority upon any debt, contract or upon any obligation to the Port Authority.

A-13 EVIDENCE OF ABILITY TO DO WORK

Bidders must present evidence to the Port Authority, with their bid, that they are fully competent and have the necessary facilities, experience, personal and pecuniary resources to deliver the material and complete the Work in a satisfactory manner and within the time specified. Failure to submit this information may be grounds for bid rejection or determination that a Contractor is unresponsive and irresponsible.

A-14 APPROXIMATE QUANTITIES

Actual contract quantities may vary from those estimated in the Contract drawings by the Port Authority to perform the scope of work outlined in the bid documents. It is the responsibility of the Contractor to verify the quantities listed in the Contract Documents. The Port Authority reserves the right to increase to perform additional work outside of work highlighted in the bid documents, or to omit any one or more items.

A-15 EXAMINATION OF SITE OF WORK

- a. Bidders are strongly encouraged to satisfy themselves as to all of the relevant existing conditions of the Site including ongoing and parallel site operations/activity, site access control and training requirements, fugitive dust generation, adjacent airport and marina operations, tracking of material onto North Marginal Rd., safety and security, material properties, elevated water table conditions, existing elevations and settlement that has occurred since last survey performed, presence of standing water, etc. Bidder's submission of a bid is the acknowledgment of Bidder that it has inspected the Site and informed itself of observable Site conditions, or has waived its right to do so, and, in any event, has assumed the risk of all Site conditions, whether latent or patent.
- b. Subject to the convenience of the Port Authority, Prospective Bidders may visit the Site and take such other steps as may be necessary to ascertain the nature and location of the Work and Site Conditions, including collecting additional survey data to assess settlement and current elevations. Prospective Bidders will be permitted to explore the Site by making borings, or dig test pits or making other test so long as it does not interfere with Port Authority business or any other users of the Site. In such event, the Work shall be done at the sole expense and risk of the Potential Bidder, who shall maintain the Site in a safe condition and restore it to its previous condition upon completion of its test. Potential Bidders desiring to visit the Site must make arrangements for such visit by contacting the Authorized Representative and have insurance acceptable to the Port Authority.

A-16 MATERIAL SAMPLES

Before any Contract is awarded, the Bidder may be required to furnish a complete certified statement of the origin, composition, quality, cleanliness, and manufacture of any or all materials to be used in the Work, together with samples, which samples may be subjected to tests to determine its quality and fitness for the Work. This is important if the Contractor is planning to use recycled products.

A-17 CONSIDERATION OF RESPONSIVE BIDS AND RESPONSIBLE BIDDERS

- a. All responsible and responsive bids shall be considered. The Port Authority reserves the right to meet with any Bidder after the Bid Opening Date but prior to the awarding of the Contract to ascertain the responsiveness of the bid and responsibility of the Bidder.
- b. To be considered responsive, a bid must comply in all respects with the terms and conditions of the Bid Package and must not contain any irregularities or deviations from the Bid Package, which would affect the amount of the Bid or otherwise give the Bidder a competitive advantage. The bid must constitute a definite and unqualified offer to perform the Work in accordance with the terms and conditions of the Bid Package. Each bid is deemed submitted on the Plans, Specifications, Bid Documents and other Contract Documents, including, but not limited to, all Addenda. The Bidder will be required to comply with all requirements of the Contract Documents, regardless of whether the Bidder had actual knowledge of the requirements and regardless of any statement, clarification, exception or qualification made by the Bidder which might

indicate a contrary intent.

- c. Factors which the Port Authority shall consider in determining whether a Bidder is responsible included, but are not necessarily limited to, the experience of the Bidder, its financial condition, its conduct and performance on previous contracts, its facilities, its management skills and its ability to execute a contract properly, and its experience working along the lakefront in high water/saturated subsurface conditions.

A-18 REJECTION OR ACCEPTANCE OF BIDS; WAIVER OF NONCOMPLIANCE

- a. The Port Authority will award the Contract(s) hereunder to the lowest responsive and responsible Bidder as determined in the discretion of the Port Authority and Sections 9.312 and 4582.12, Ohio Revised Code.
- b. The Port Authority reserves the right to reject any or all bids. The Port Authority reserves the right to act in its best interest in awarding a Contract. Any bid, which is incomplete, conditional, ambiguous, or which contains additions not called for, irregularities of any kind, or in any manner does not strictly comply with this Bid Package, may be rejected.

A-19 WITHDRAWAL OF BID

No bid may be withdrawn after the bid deadline has passed with the Port Authority.

A-20 TIME OF AWARD

Unless further time is required for analysis of the responsiveness of the bids or investigation of the responsibility and ability of any Bidder and in the absence of a limitation upon the time of acceptance set forth in the bid, the Port Authority will ordinarily notify the successful bidder its intent to award or reject all bids received hereunder not later than thirty (30) days following the opening of bids although it reserves the right to unilaterally extend that time in a written notice to Potential Bidders, but in no event shall it be longer than sixty (60) days from Bid Opening Date. Any extension of time beyond that date shall be subject to agreement between said Bidder and the Port Authority. The Port Authority anticipates taking this Project before our Board for authorization to award at our July Board meeting, presently scheduled for July 15th, 2021.

A-21 EXECUTION OF CONTRACT

After award, within three (3) days of being provided with a final version of the Form Contract attached in draft form hereto, with blanks appropriately completed, Bidder shall execute the Form Contract and return to Port Authority. The finalized Form Contract will be sent to the successful Bidder following Board approval and authorization of the Contract.

A-22 PERFORMANCE AND PAYMENT BOND

The Contractor shall furnish a payment and performance bond to the Port Authority in the form specified by Sections 153.54, 153.57 and 153.571 of the Ohio Revised Code, for the amount at least equal to 100 percent of the estimate as security for the faithful performance of its Contract.

A-23 RELEASE OF BOND

The Contractor's bond will be released in the manner provided by law.

A-24 FEDERAL PREVAILING WAGE RATES & PAYROLL REQUIREMENTS

This Project must comply with the provisions of the Davis-Bacon and Related Act. Please refer to Section 18.1 of the referenced U.S. Department of Transportation Maritime Administration Agreement. For up-to-date information regarding the Davis-Bacon and Related Act, please visit the Federal website at: <https://www.fhwa.dot.gov/construction/cqit/dbacon.cfm>. Additional bid requirements related to prevailing wage and certified payrolls can be found in section B-26.

A-25 FEMALE & MINORITY OWNED BUSINESS REQUIREMENTS

The Port Authority is committed to economic inclusion of minority and female-owned businesses in its capital and development-finance programs. We have an established participation goal of 30%. The Port Authority understands that as result of market limitations and details specific to each project, that a 30% participation goal may be a unattainable on certain projects dependent on scope and size of the Project. **Please indicate the level of anticipated Contractor FBE/MBE project participation percentage on the Bid Forms.** The participation level will be evaluated as part of an overall bidder's responsiveness. Prior to awarding the Contract, the Port Authority may request an MBE/FBE participation plan outlining how the Bidder intends on achieving the participation level listed on their Bid Form. It is the expectation that all minority and female firms working on the project will perform a commercially useful function and that the contractor will exercise its best efforts to utilize certified Minority Business Enterprises ("MBE") and Female Business Enterprises ("FBE") businesses in the construction of the Project at a level of 30% or greater.

The Port Authority adheres to the following definition of commercially useful function:

A Minority or Female-Owned Enterprise performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The company must also be responsible, with respect to materials and supplied used on the contract, for negotiating price, determining quality and quantity, ordering materials and installing (where applicable) and paying for the materials itself.

A-26 LIMITATION ON USE OF CONTRACT FUNDS FOR LOBBYING

The prospective bidder certifies, by signing and submitting this bid proposal, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and grant agreements) and that all subrecipients shall certify and

disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A-27 DRUG FREE SAFETY PROGRAM

During the life of this project, the Contractor and all its Subcontractors, that provide labor on the Project site, must be enrolled in and remain in good standing in the Ohio Bureau of Worker's Compensation ("OBWC") Drug-Free Safety Program ("DFSP") or a comparable program approved by the OBWC.

In addition to being enrolled in and in good standing in an OBWC-approved DFSP or a comparable Drug Free Workplace Program ("DFWP") approved by the OBWC, the LPA requires each Contractor and Subcontractor that provides labor, to subject its employees who perform labor on the project site to random drug testing of 5 percent of its employees. The random drug testing percentage must also include the on-site supervisors of the Contractors and Subcontractors. Upon request, the Contractor and Subcontractor shall provide evidence of required testing to the Port Authority.

Each Subcontractor shall require all lower-tier Subcontractors that provides labor on the project site with whom the Subcontractor is in contract for the Work to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to a lower-tier Subcontractor providing labor at the Site.

The Port Authority will declare a bid non-responsive and ineligible for award if the Contractor is not enrolled and in good standing in the Ohio Bureau of Workers' Compensation's DFSP Discount Program or a similar program approved by the Bureau of Workers' Compensation within 8 days of the bid opening. Furthermore, the LPA will deny all requests to sublet when the subcontractor does not comply with the provisions of this proposal note.

Failure of the Contractor to require a Subcontractor to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to the time that the Subcontractor provides labor at the Site, shall result in the Contractor being found in breach of the Contract and that breach shall be used in the responsibility analysis of that Contractor or the Subcontractor who was not enrolled in a program for future contracts with the State for five years after the date of the breach.

A-28 OHIO WORKERS' COMPENSATION COVERAGE

The Contractor must secure and maintain valid Ohio workers' compensation coverage until the project has been finally accepted by the Ohio Department of Transportation. A certificate of coverage evidencing valid workers' compensation coverage must be submitted to the Port Authority before the Contract will be executed by the Port Authority.

The Contractor must immediately notify the Port Authority, in writing, if it or any subcontractor fails or refuses to renew their workers' compensation coverage. Furthermore, the Contractor must notify the Port Authority, in writing, if its or any of its subcontractor's workers' compensation policies are canceled, terminated or lapse.

The failure to maintain valid workers' compensation coverage shall be considered a breach of Contract which may result in the Contractor or subcontractor being removed from the project, withholding of pay estimates and/or termination of the Contract.

A-29 UNRESOLVED FINDING FOR RECOVERY, TAX LIABILITY, OR FELONY CONVICTION

The Contractor affirmatively represents to the Port Authority that it is not subject to a finding for recovery under Ohio Revised Code §9.24, or that it has taken the appropriate remedial steps required under §9.24 or otherwise qualifies under that section. The Contractor agrees that if this representation is deemed to be false, the Contract shall be void ab initio as between the parties to this Contract, and any funds paid by the state hereunder shall be immediately repaid to the Port Authority, or an action for recovery may be immediately commenced by the Port Authority and/or for recovery of said funds.

The Port Authority will not enter into an Agreement with corporations that:

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

By submitting a bid, the Contractor therefore agrees:

1. **Definitions.** For the purposes of this exhibit, the following definitions apply:

“**Covered Transaction**” means a transaction that uses any funds that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

“**Felony Conviction**” means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

“**Participant**” means the Port Authority, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

“**Tax Delinquency**” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. Prior to Award, the Port Authority will perform a mandatory check in the System for Award Management “SAM” before entering into the Agreement with the Contractor at <http://www.sam.gov/> for an entry describing that entity.

3. **Mandatory Certifications.** Before entering into this Agreement with the Contractor, the Port Authority shall:

- (1) Certify whether the entity has a Tax Delinquency; and
- (2) Certify whether the entity has a Felony Conviction.

4 **Prohibition.** If

- (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
- (2) an entity provides an affirmative response to either certification in section 3; or
- (3) an entity's certification under section 3 was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless we have received information from the Federal government in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.

5. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Port Authority requires the Contractor to:

- (1) require the SAM check in section 2;
- (2) require the certifications in section 3 (See Question 15 On Bid Form);
- (3) include the prohibition in section 4; and

A-30 PERMITS & PERMIT COMPLIANCE

The Port Authority and our site operator, Kurtz Brothers, have existing permits in place for operations at the Sediment Processing & Management Facility. This includes but is not limited to permits with the following agencies:

- Ohio EPA
- City of Cleveland Division of Air Quality
- Federal Aviation Administration

The Port Authority will make available upon request, copies of these permits along with relevant supporting documentation. Contractor's will be required to proactively take steps to comply with the requirements of these permits, particularly the City of Cleveland's Division of Air Quality and the Federal Aviation Administration's permits/determinations. A Construction Safety Phasing Plan has been developed in support of and related to general maintenance and operations on the surfaces of CDF's 9 & 12. Contractor will be required to comply with the contents of this Contractor Safety Phasing Plan on file with Burke Lakefront Airport and the Federal Aviation Administration.

A-31 BID ADD ALTERNATES

Several bid add alternates have been included as part of this Project. Please bid in accordance with the attached Bid Form and the PS&E Package and provide competitive pricing for all add alternates. With your bid, please submit a description of the planned means and method to be exercised by the Contractor to fortify/armor/harden the 4 EA. sluiceway spillway skimming weirs. Add alternates will be awarded and exercised by the Port Authority in the numerical order they are bid. Note, the Port Authority may only elect to exercise and harden only a single spillway weir and monitor its performance, as result this is not a Lump Sum bid item. The bid form in its entirety must be fully populated to be considered fully responsive. Upon submission of the bid, the Port Authority will review the submitted bids, the amount of available funding for the Project, and determine the lowest responsive and responsible bidder based upon the final scope of work. This may or may not include the exercising of the bid add alternates on top of the base bid. Note, upon determining the final scope, it is possible the Contractor with the lowest base

bid may not be the determined as the lowest, responsive and responsible bidder if funding is available for the add alternate(s) to be exercised.

A-32 OHIO ETHICS LAWS

By submitting a bid, the Contractor affirms it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

A-33 ENGINEER'S ESTIMATE

The Engineer's Estimate on this Project is \$634K as of pricing determined in March of 2021. This pricing includes the Add Alternates.

A-34 EXISTING SITE ELEVATION & CONDITIONS

Please note, the survey data contained in the plan set may not be representative of the existing elevations or conditions on site. As result of the nature of operation and the geotechnical conditions, the site has been known to settle and dredge sediment is constantly being moved in and around the Facility. The Port Authority will not be responsible for claims that result from variations in elevations or site conditions from those included in the plan set.

A-35 BURKE LAKEFRONT AIRPORT & FAA DELAYS

The Port Authority shall not be financially responsible for any costs or damages that result from delays or interruptions in work by Burke Lakefront Airport and the Federal Aviation Administration. The Port Authority will consider these delay Excusable, Non Compensable Delays unless the scope and nature of work changes as result of the delays.

A-36 PAY ITEM DESCRIPTIONS

PAY ITEM 1: Health and Safety Plan/Mobilization/Demobilization/General Conditions Complete

This item will include all necessary labor, equipment, materials, fees, expenses, costs, insurance, driver safety training/access credentialing, FAA safety compliance, and supervision to satisfy all the general requirements of the Contract, setting up any support needed for the Project, and for the Contractor to develop, implement and maintain current, a Site-Specific Health and Safety Plan (HASP). The Contractor's HASP, (which will also include the Contractor's Corporate HASP, will comply with all Occupational Health and Safety Administration (OHSA) requirements, and will be utilized by the Contractor for the duration of the Project in all areas of the Site. Each Contractor shall prepare, execute, and enforce a HASP for the Work, which will be performed at the Site. At a minimum, the Contractor's Health and Safety Plan shall include:

1. An acknowledgement and understanding of the Site Conditions and requirements set for in the Construction Safety Phasing Plan .
2. Identification of personal protective equipment needs for the various Work activities.
3. Identification of monitoring equipment and procedures to be used during various Work activities.
4. Directions to the Site.
5. A listing of emergency routes to the nearest hospital and emergency room.
6. Telephone numbers and location of the following:
 - a. Nearest hospital and emergency room.

- c. Police (both State and local).
- d. Fire department.
- e. Emergency Medical Service.
- f. Airport Operations
- g. Port Authority
- h. Contractor's Supervisory and Management personnel (Work, home and mobile).
- 7. A plan for emergency response, notification, and muster points.
- 8. Identification of Contractor's on-site Health and Safety Officer.
- 9. Documentation of appropriate training of the Contractor's personnel, including but not limited to, training in accordance with 29 CFR 1910.120, and current 8-hour refresher.

The Contractor must ensure proper precautions are taken to protect Site workers and the public. The Contractor's health and safety policies shall meet or exceed the minimum requirements of applicable OSHA standards for the type of Work covered by the Plans and Specifications and the Contract. The Contractor's HASP shall be prominently displayed at the Site. The Contractor is further responsible for all personal protective equipment (PPE) and monitoring instruments for its workers.

Before construction begins, it is the Contractor's responsibility to contact the Ohio Utility Protection Services (OUPS) and the Oil and Gas Producers Underground Protection Service (OGPUPS) by dialing 8-1-1 or via the web-based e-dig or i-dig Newtin remote ticket entry system, depending on the complexity of the project and areas to be marked. The Contractor shall take other measures as needed to ensure utilities are appropriately marked and an assured distance is maintained for the duration of the Contract. The Contractor shall coordinate with Owner regarding location of all private utilities onsite.

This item will include all necessary labor, equipment, materials, fees, expenses, costs, insurance, permits, bonds, and supervision for the Contractor to satisfy all the general requirements of the Plans and Specifications and Contract, and for setting up any support needed for the Base Bid Work. It shall also include all general conditions of the Plans and Specification and the Contract, including, but not limited to, coordination with the Owner and the Engineering Consultant, to the extent necessary to communicate completion of work, obtaining submittal and alternate material approvals, and updates to the construction schedule. This item will also include any field office, supplies, and utility set-up for the entire Project as applicable.

This item will also include all necessary labor, equipment, materials, fees, expenses, costs, insurance, permits, bonds, and supervision for the Contractor to provide a construction assistance surveying and a professional survey for the completed Work and document the overall extents of the work completed (horizontal and vertical elevations) by a State of Ohio licensed surveyor. The survey will include one (1) foot contour intervals established to the local state plane datum. The survey information shall be submitted in paper and electronic format (i.e., PDF and CAD file) to the Owner and Engineering Consultant.

The Contractor shall also provide temporary FAA approved barrier (water filled barriers) appropriate traffic control, safety measures around excavations and other work activities, and other necessary security measures sufficient for preventing unauthorized access into the Work areas throughout the duration of all Work. At the conclusion of all Work activities, the temporary barricades shall be removed from the work area.

This item shall include all work coordination with the Port Authority's Facility Operator, Kurtz Brothers. The Contractor's actions should not disrupt or limit Kurtz Brother's ability to operate and perform their work necessary to prepare the Facility for the fall dredge cycle. During the bid and upon award the Contractor's are encouraged to coordinate and communicate with Kurtz Brothers to plan their work. In addition, this pay item should

include the watering of roads to prevent/limit fugitive dust emissions and the sweeping/cleaning of North Marginal Rd. to keep the public right of way clean.

This item will also include other costs not specifically mentioned, but necessary or prudent to perform the Work, as well as all costs for demobilization at the end of the Project. No other charges for mobilization, demobilization or general conditions shall be allowed for the Project's duration.

Prior to demobilization, the Owner, Engineer/Owner's Representative, and Contractor representatives will inspect each Work area to verify that the Contractor has fulfilled his Scope of Work for that task and the Work is suitable for possession by the Owner. Areas of damage outside the limits of Work, if any, will be identified and appropriate remedies will be defined. A "punch list" of outstanding items will be prepared by the Owner and Engineer/Owner's Representative for resolution by the Contractor. The Contractor will remove all equipment, materials, and debris from the Site upon completion of the Work. On-site material generated from scraping and overexcavation of roadways may be disposed of and graded out in the mechanical basins. Demobilization will not be considered complete until all identified punch list items are resolved. No other charges for mobilization, demobilization or general conditions shall be allowed for the Project's duration.

Pay Item 01 will be paid by the Lump Sum.

PAY ITEM 2: Site Operator/Stockpile Roadway Drainage Improvements

This item will include all necessary labor, equipment, materials, fees, expenses, costs, and supervision for the Contractor to install the proposed drainage culverts from the southern portion of the Site Operator's processing/stockpile area below the existing southern roadway to the vegetated areas/swale south of the access roadway in accordance with the drawings. This work includes excavation of drainage channels along the northern edge of the access roadway based on actual field conditions encountered to promote drainage toward the proposed culverts and to facilitate future water management activities implemented by the Site Operator. This work also includes the restoration of the existing roadway/embankment, placement of rock channel protection materials, and restoration/hydroseeding of disturbed vegetated areas in accordance with the drawings. The Contractor shall provide a certified as-built survey for the completed work and document the overall extents of the work (horizontal and vertical elevations, inverts, etc.), in accordance with Pay Item 01.

Pay Item 02 will be paid Lump Sum.

PAY ITEM 3: CDF 12 Water Handling Pond 2 Regrading

This item will include all necessary labor, equipment, materials, fees, expenses, costs, and supervision for the Contractor to regrade the cell floor of CDF 12 Water Handling Pond 2. The cell floor shall be graded/contoured to promote drainage (from the southeast corner to the northeast corner) toward the existing operable weir structure and eliminate ponding on the cell floor. This will require dewatering and may require the import of suitable material to regrade the floor of this cell. The Contractor shall provide a certified as-built survey for the completed work and document the overall extents of the work (horizontal and vertical elevations, inverts, etc.), in accordance with Pay Item 01.

Pay Item 03 will be paid Lump Sum.

PAY ITEM 4: Existing Outlet Weir Structure Cleaning & 30" CMP Outfall Repair

This item will include all necessary labor, equipment, materials, fees, expenses, costs, and supervision for the Contractor to clean the existing outlet weir structure (from CDF 12 Water Handling Pond 3 to Lake Erie) and the repair of the breach in the 30" CMP pipe at the interface of the concrete vault. The components of the existing outlet weir structure shall be vacuumed, excavated, and cleaned, including in front of, and inside of, the exit weir cage, control structure and discharge pipes. The 30" CMP pipe will need to be partially demolished, and a new section of 30" CMP pipe coupled onto the existing and the annulus of the pipe sealed at the concrete vault. The pipe shall be cut no closer than 3' from the failed/deteriorated section. This work also includes the restoration of disturbed vegetated areas, restoration of embankments/slopes, and reinstallation, as required, of the weir structure access gangway.

Pay Item 04 will be paid Lump Sum.

PAY ITEM 5: Existing Site Operator/CDF 12 Pond 2 Roadway Reconstruction (BLUE HATCH)

This item will include all necessary labor, equipment, materials, fees, expenses, costs, and supervision for the Contractor to reconstruct the existing Site Operator/CDF 12 Pond 2 roadway. The eastern portion of the existing roadway between the Site Operator's Area and the CDF 12 Water Handling Pond 2 shall be reconstructed to the limits and elevations shown on the drawings and shall taper into the side of the existing berm. This improvement work shall extend to connect the Site Operator/CDF 12 Pond 2 roadway to the existing western berm/roadway of the Western Silt Management Cell to permit vehicle passage and access. This work includes the reconstruction of the depressed/rubblized portion of the existing berm per ODOT CMS Item 204 and installation of a typical aggregate roadway surface. The improvements should be graded to blend into existing grades at the limits of the work area (along the shoulder) and the termination of work shall also tie/blend into the adjoining roadway(s) and vegetated mechanical basin berm. Following completion, inspection vehicles should be able to transit from topside of mechanical berm down across this section of roadway. The top interior slope of water handling pond 2 and the mechanical cell berm disturbed areas shall be hydroseeded. The Contractor shall provide a certified as-built survey for the completed work and document the overall extents of the work (horizontal and vertical elevations, inverts, etc.), in accordance with Pay Item 01.

Pay Item 05 will be paid Lump Sum.

PAY ITEM 6: CDF 9 Sluiceway Haul Road Restoration (DARK GRAY HATCH)

This item will include all necessary labor, equipment, materials, fees, expenses, costs, and supervision for the Contractor to restore the CDF 9 sluiceway haul road, including the similarly hatched area identified on the drawings between the Site Operator's Area and the CDF 12 Water Handling Pond 2. The existing sluiceway roadways shall be resurfaced and restored to original design grades and minimum width of 25 feet, as shown on the drawings, which may require some recontouring of sluiceway side slopes. Additional aggregate and subbase materials shall be placed over the main haul roads and traffic routes in accordance with the details included on the drawings. Surface scraping of existing fine-grained materials is required up to 3 inches depth. More substantial settlement/consolidation has been observed within the hatched areas identified on the drawings. These areas will require over excavation of approximately 1 foot and reconstruction using embankment fill per ODOT CMS Item 204 prior to completion of the haul road restoration. The improvements should be graded to blend into existing grades at the limits of the work area (along the shoulder) and the termination of work shall also tie/blend into the adjoining roadway(s). The Contractor shall provide a certified as-built

survey for the completed work and document the overall extents of the work (horizontal and vertical elevations, inverts, etc.), in accordance with Pay Item 01.

Pay Item 06 will be paid Lump Sum.

PAY ITEM 7: CDF 9 Sluiceway Offloading Area Improvement (TAN HATCH)

This item will include all necessary labor, equipment, materials, fees, expenses, costs, and supervision for the Contractor to improve the CDF9 sluiceway offloading area. As result of FAA elevation enhancement limitations, the elevations in this area should be restored in similar fashion to the dark gray hatch of Pay Item 6. The existing sluiceway offloading area shall be resurfaced and restored in elevation to the grades as shown on the drawings. Additional aggregate and subbase materials shall be placed over the offloading area in accordance with the details included on the drawings. Surface scraping of existing fine-grained materials is required up to 3 inches depth. Additional scraping and repair work may be required at locations that may have settled or that are cutting/turning locations for equipment. The Contractor shall provide a certified as-built survey for the completed work and document the overall extents of the work (horizontal and vertical elevations, inverts, etc.), in accordance with Pay Item 01.

Pay Item 07 will be paid Lump Sum.

PAY ITEM 8: Operable Weir Structure Re-armoring

This item will include all necessary labor, equipment, materials, fees, expenses, costs, and supervision for the Contractor to re-armor the operable weir structures (from the Sluiceway pond to the CDF 12 water handling ponds and between the water handling ponds 2 and 3). The inlet portion of the existing operable weir structures shall be re-established with rip-rap surrounding the side slopes and concrete wingwalls of the weir structures (3 locations) that are to remain. This Pay Item shall also strip all vegetation and surface sediment immediately behind on top of each of the weir structures between the structure and the roadways. The Contractor should include the installation of vegetation inhibiting fabric and the installation of 6" of compacted 304 surface aggregates to create a level/stable working platform on top the weirs free of dredge sediment locally at the three weir structure locations. The new armor stone should be blended into this surface.

Pay Item 08 will be paid Lump Sum.

PAY ITEM 9: Sluiceway Outlet Pipes Improvements

This item will include all necessary labor, equipment, materials, fees, expenses, costs, and supervision for the Contractor to improve the existing Sluiceway outlet pipes (from the sluiceway serpentine pond to the CDF 12 Water Handling Ponds). The existing Sluiceway outlet pipes shall be raised or extended vertically in accordance with the drawings to maximize hydraulic capacity of water retention pond. The Contractor shall install an elbow to the northern outlet pipe, and shall either install an elbow to the southern outlet piper, or remove the pipe and reconstruct the existing embankment and roadway. The Contractor shall provide a certified as-built survey for the completed work and document the overall extents of the work (horizontal and vertical elevations, inverts, etc.), in accordance with Pay Item 01. The finished elevation of the risers shall be cross checked against elevation of sluiceway 2 spillway and the invert elevations of the sluiceway 1 & 3 discharge pipes into the serpentine pond as this pond should never back flood into the serpentine pond.

Pay Item 09 will be paid Lump Sum.

**PAY ITEM 10: MAIN ENTRANCE ROADWAY SURFACE MAINTENANCE ONLY
(PINK/RED HATCH REVISED SCOPE)**

Note, as result of FAA permit limitations, the scope of work to be performed under this pay items has been modified. This item will include all necessary labor, equipment, materials, fees, expenses, costs, and supervision for the Contractor to restore and rehabilitate the access roadway. The work areas shall be from Gate 18 extending out to the CDF and should encompass the red hatched areas in the plan set. The existing access roadway shall be resurfaced and restored to match current elevations and current limits. Additional aggregate and subbase materials shall be placed over the main haul roads and traffic routes in accordance with the details included on the drawings. Surface scraping of existing fine-grained materials and compacted aggregates is required in excess of 3" to ensure the overall elevation of the roadway is not increased. Locations of localized settlement should be scraped and locally prior to the general resurfacing. The existing roadway must always remain in service while this work is performed and while working on this road, the Contractor must coordinate with the Airport daily. The improvements should be graded to blend into existing grades at the limits of the work area (along the shoulder, parking areas, and airport operation pull offs) and the termination of work shall also tie/blend into the adjoining roadway(s). The Contractor shall provide a certified as-built survey for the completed work and document the overall extents of the work (horizontal and vertical elevations, inverts, etc.), in accordance with Pay Item 01.

Pay Item 10 will be paid Lump Sum.

PAY ITEM 11: Overall Site Debris Removal

This item will include all necessary labor, equipment, materials, fees, expenses, costs, and supervision for the Contractor to remove debris from the Site. This work includes the miscellaneous clearing and grubbing around the site to clear all berms and remove/dispose of the debris as identified on the drawings. This includes all materials that could foul a mowing deck and the removal of debris from the perimeter rock dike (timber debris, abandoned dredge pipe, misc. structures, etc.). All debris shall be removed off site and properly disposed.

Pay Item 11 will be paid Lump Sum.

PAY ITEM 12: Add Alternate #1 - CDF 9 Sluiceway Weir Structures Hardening

This item will include all necessary labor, equipment, materials, fees, expenses, costs, insurance, and supervision for the Contractor to harden the CDF9 sluiceway weir structures. The existing weir structures shall be restored/regraded using existing rip-rap material to the design grades as shown on the drawings. These structures (3 sediment control weir structures and 1 outlet water control weir structure) shall then be hardened to ensure they remain at a consistent elevation during material harvesting activities, function as a skimming spillway during hydraulic offloading, allow site equipment to cross, and facilitate recovery of the offloaded material without damaging the improved structure. Cracking and minor settlement of the structures will be acceptable, but the final structure should be able to be scraped by a bucket for cleaning/clearing of adjacent material, and should be able to support and not sustain damage from equipment, including tracked equipment, traveling across. Hardening alternatives may include, but are not limited to, pumped concrete, concrete mats, dense finished concrete, non-reinforced concrete, or grouted rip-rap. The Contractor shall be prepared to provide their approach and tender questions following the submissions of their bid on their means/methods to harden these structures prior to award. After award, the Contractor shall provide a submittal (shop drawing, approach, material specifications, etc.) of the selected hardening alternative for

approval by the Owner/Engineer. The Contractor shall provide a certified as-built survey for the completed work and document the overall extents of the work (horizontal and vertical elevations, inverts, etc.), in accordance with Pay Item 01.

Alternate Pay Item 12 will be paid per weir structure and the Port Authority reserves our rights to award/perform partial quantity to test out effectiveness

PAY ITEM 13: Add Alternate #2 - Reestablish Erosion Protection Near CDF 9 Sluiceway Offloading Area

This item will include all necessary labor, equipment, materials, fees, expenses, costs, insurance, and supervision for the Contractor to reestablish existing rip-rap at the western end of the sluiceways near the offloading area, as shown on the drawings, including regrading of existing rip-rap and installation of rip-rap as needed to protect the side slopes during offloading. The edges of this area shall be tied-in/blended into the adjacent sluiceway side slopes.

Alternate Pay Item 13 will be paid Lump Sum.

Part B - General Conditions

B-1 CONTRACT DOCUMENTS

The following shall constitute the Contract Documents and shall be deemed the Contract made pursuant to this Bid Package:

- (1) All provisions required by law or resolution to be inserted in the Contract, whether actually inserted or not.
- (2) The Resolution of the Port Authority awarding the Contract.
- (3) Amendments to the Contract.
- (4) The Form Contract as completed and executed.
- (5) All Addenda issued by the Port Authority prior to Bid Submission.
- (6) Project Specifications and Supplemental General Conditions.
- (7) General Conditions.
- (8) Instruction to Bidders.
- (9) The Contract Drawings.
- (10) Construction Safety Phasing Plan & FAA Airspace Determination
- (11) Ohio Department of Transportation 2019 Construction & Material Specifications
- (12) The Resolution authorizing the making of the public improvement.
- (13) All required Policies of Insurance.
- (14) The Bid Affidavit of Non-Collusion.
- (15) The Bid.
- (16) City of Cleveland Division of Air Quality Permit
- (17) OEPA NPDES Permit

B-2 CONFLICT BETWEEN CONTRACT DOCUMENTS & LOCAL/FEDERAL REGULATIONS

In the event there is a conflict between the provisions in various Contract Documents, and it is impossible to reconcile the conflict between the provisions, the provision that is in the Contract Document appearing first in the order set forth above shall take precedence. If there is any language or requirements of the Contract Documents that conflict between local contract language and Federal rules, the Federal rules shall prevail.

B-3 TIME OF ESSENCE

Time is of the essence in the Contract. The Contractor shall begin Work on the day specified in paragraph B-4a and shall prosecute the work diligently so as to assure completion of the Work not later than the time specified in B-4b, or the time of completion as extended, pursuant to paragraph B-6 hereof.

B-4 TIME OF COMMENCEMENT AND COMPLETION OF WORK

- a. A Contract shall be deemed executed when signed by the parties.
- b. Unless provided in the Specifications and Supplemental Conditions, the Bidder shall state in his bid the date by which the Work will be completed. Where equal bids are received, the date of completion will be used in determining the lowest responsive and responsible bidder. Work shall be complete no later than September 30th as the fall dredge cycle is anticipated to commence on or after October 1st, 2021. Contractor is not required to mobilize and commence work within a given period, however, once mobilized work shall be complete under one mobilization and work shall be managed to be complete no later than the September 30th, 2021 deadline.

B-5 LIQUIDATED DAMAGES FOR DELAY

The Contractor will complete the Work on or before the dates and milestones fixed or otherwise agreed to in the Agreement, as it may be extended as provided in paragraph B-6. Damages to the Port Authority will result from the failure of the Contractor to timely complete the Work which will impact the operations of the facility and our site operator. Liquidated damages will be assessed in accordance with ODOT's 2019 CMS 108.07 in the amount of \$600.00 for each Calendar Day of Overrun in Time.

B-6 DELAY FOR CAUSES BEYOND CONTRACTOR CONTROL

- a. If the Contractor is delayed in the completion of the Work by any act or omission of the Port Authority, or by any other contractor employed by the Port Authority, or by changes ordered in the Work, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any cause beyond the Contractor's control, including orders, limitations, or restrictions of any governmental agency having jurisdiction over the Work, or by delay authorized by the Port Authority, or by any cause which the Port Authority decides justifies the delay; then, for all such delays and suspensions, the Contractor shall be allowed one calendar day extension beyond the time herein stated for completion of the Work for each and every calendar day of such delay so caused, the same to be ascertained by the Port Authority.
- b. The Port Authority will consider an extension to the completion date and milestone dates in the event of extended periods of adverse weather or seasonal conditions in accordance with CM&S 108.6. Payment for excusable days will also be considered by the Port Authority and evaluated in accordance with CM&S 108.6.
- c. No extension shall be made for any one or more of such delays unless within ten (10) days after the beginning of such delay a written request for additional time shall be filed with the Port Authority. In case of a continuing cause of delay, only one request will be necessary.
- d. No claims for damages or any claim other than for an extension of time as herein provided shall be made or asserted against the Port Authority by reason of any delay.
- e. When by reason of any of the causes stated herein an extension of time has been allowed for the completion of Work, the Contractor shall not be entitled to a bonus for completion prior to the date so extended, anything in the Contract Documents to the contrary notwithstanding.

B-7 STORAGE OF MATERIALS & PAYMENT FOR STORED MATERIALS

- a. The Contractor shall make all necessary arrangements and provisions for the storage of materials and equipment to be used for the Work.
- b. Materials and equipment which are to become the property of the Port Authority shall be stored as to facilitate their prompt inspection and ensure preservation of the quality and fitness of the materials and equipment, including proper protection against damage by freezing and wet weather; and shall be placed under cover on wooden platforms or other hard, clean surfaces, and not on the ground, when so directed. Whenever the best interest of the Port Authority so requires, upon order of the Port Authority, the Contractor shall promptly provide improved storage facilities and methods.
- c. Property other than Port Authority property shall not be used for storage purposes

without written permission of the Owner or other person properly in possession or control of such premises.

- d. The Port Authority disclaims all responsibility for loss or damage to stored materials or equipment, or both.
- e. The Port Authority will not pay for stored materials that are located offsite. For materials that are stored on site, which have not been incorporated into the work, the Contractor shall provide proof of the value of stored material if seeking payment for materials stored on site.

B-8 RESPONSIBILITY OF CONTRACTOR FOR DAMAGE TO WORK

- a. The Port Authority will not insure the Work until Final Acceptance is issued nor insure against claims for injury to persons or property arising during performance of the Work. The Contractor will be held responsible for all damage to the Work, regardless of cause, until final completion and acceptance, even though partial payments have been made under the Contract. The Contractor will be held answerable for all damages that may occur to persons or property from want of proper shoring, bracing, lighting, watching, boarding or enclosing, and for any accident arising from defective scaffolding or apparatus, or from any negligence on the part of it or its employees.
- b. The Contractor shall provide proper facilities, take all necessary precautions and assume the entire cost for protecting the Work against adverse weather conditions, temporary stability, and for handling all storm and flood water, sewage, seepage, ice or snow that may be encountered during the performance of the Contract. The manner of providing for such contingencies and for carrying on the Work in freezing weather shall meet with the approval of the Port Authority.

B-9 DUTY AND RESPONSIBILITY OF CONTRACTOR FOR PLANT AND METHODS

The Contractor shall provide and install such plants and shall use such methods and appliances for the performance of all operations connected with the Work as will secure the safety of the Work and those working on it, a satisfactory quality of the Work and a rate of progress that will ensure the completion of the Work within the time specified. If at any time before the commencement or during the progress of the Work, or any part of it, such methods and appliances appear to be unsafe, inefficient or inadequate for securing the safety of the Workmen, the quality of the Work or the rate of progress required, the Port Authority may order the Contractor to increase safety measures or to improve their character, and the Contractor shall comply with such orders; but the failure of the Port Authority to make such a demand shall not release the Contractor from its obligation to secure the safe conduct and the quality of the Work, and the rate of progress required. The Contractor alone shall be responsible for the safety, efficiency and adequacy of its plant, appliances and methods.

B-10 STRUCTURES ENCOUNTERED AND PROTECTION OF PROPERTY

- a. The Contractor shall, at its own expense and as part of their bid, support and protect all new/existing structures, improvements, equipment and fixtures of all kinds and all other property that may be encountered or endangered in the prosecution of the Work. It shall repair and make good any damage caused to any such property by reason of its operations leaving all Work in approved condition at the completion of the Contract. Contractor is responsible for their means and methods and if during their progression of work they elect to take additional risk which results in a failure or damage to existing structures, they shall be responsible for all costs

associated with the restoration and repair.

- b. The Port Authority reserves the right to repair any damage to property caused by the Contractor, or its Subcontractors, Laborers or Materialmen and the cost of such repair shall be borne by the Contractor. In the event the Contractor refuses or fails to pay for such repair work, without prejudice to any other remedies available to the Port Authority, the cost of the same shall be deducted from any money that may be due it.

B-11 SECURITY ESCORTS & SAFEGUARDS

- a. As part of the Contractor's bid, it shall provide the necessary escorts, watchmen, signage, safeguards, sufficient warning lights, and barricades at its own expense and it shall take such other precautions as are necessary to protect life and property of its workers, the Port Authority, and the public at all times. Additional measures may be requested of the Contractor by the Port Authority above those shown in the Contract at no additional cost to the Port Authority. Please note that the Port Authority staffs the site with two security personnel M-F from 7 AM to 3:00 PM. One monitors the access gate and the other escorts untrained/ uncredentialed drivers. Note, our security contractor will support both the Contractor and Kurtz Brothers, with priority given to the Site Operator. All personnel working on site will be required to have driver safety training and delivery and truck drivers are also strongly recommended to be trained. For more information please see the Construction Safety Phasing Plan.
- b. The Port Authority or an authorized representative may at any time order the Contractor to provide watchmen or additional safety control measures, in its opinion that may be required, at no additional cost to the Port Authority.

B-12 SANITARY PROVISIONS

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of law and ordinance.

B-13 WATER SUPPLY

Direct connections to water infrastructure are available at the site. Arrangements may be made with the City of Cleveland, Cleveland Fire, and the Port Authority's Director of Operations & Facilities, to access water at local hydrants on the Terminal. Contractor will be required to obtain permits, meter, and other requirement to use a hydrant as clean source water. If needed, this shall be done at no additional costs to the Port Authority.

B-14 ACCESSIBILITY OF FIRE HYDRANTS AND STOP VALVES

Fire hydrants and stop valves adjacent to the Work or on or adjacent to the Site shall be kept readily accessible to fire apparatus and no material or other obstruction shall be placed within five (5) feet of any hydrant or stop valve unless by special permission of the proper authorities.

B-15 REMOVAL OF RUBBISH & HOUSEKEEPING

The Contractor shall, at its own expense, keep the Site and Work, clean during the construction and remove all rubbish as it accumulates. Upon the completion of the Work, the Contractor shall remove all temporary structures and rubbish of all kinds and shall leave the Site and the Work in a clean and neat condition. Dumpsters on site are only permitted to house construction debris, no organics or material that would attract wildlife is permitted to be deposited in the dumpster. Dumpsters must be covered at all times. If at any time, the Port

Authority believes that the Contractor's housekeeping efforts, or lack thereof, may result in an increased safety risk or lead to quality of work issues, the Port Authority will request the Contractor immediately address these issues at its own expense. All items which may go airborne must be security anchored down and/or not stored on site during the progression of work.

B-16 PUBLIC LIABILITY, PROPERTY DAMAGE AND AUTOMOBILE INSURANCE

The Contractor will be required to meet the minimum insurance requirements outlined and further detailed below. The cost of insurance is incidental to all contract items unless specified. The Contractor shall take out and maintain during the life of the Contract such public liability and property damage insurance, with the Port Authority and the City of Cleveland, named as an additional insured, as shall protect the Contractor, the Port Authority and any Subcontractor performing Work from damage, personal injury, accidental death, and property damage which may arise from operations under the Contract, whether such operations are by the Contractor, Subcontractor or anyone directly or indirectly employed by or operating as an independent contractor for either of them. *If there is an exposure of injury to the Contractor under the U.S. Longshore and Harbors Workers' Compensation Act, the Jones Act, or under laws regulations or statues applicable to maritime employees, coverage shall be included for such injuries or claims.* An exact copy of such policy or policies shall be deposited with the Port Authority before the commencement of any Work. The amounts of such insurance shall be as follows:

- a. Commercial General Liability insurance and, if necessary, commercial umbrella insurance in an amount not less than \$5,000,000 for each occurrence against claims for bodily injury, death and property damage.
- b. The following special hazards shall be covered during the life of the Contract by rider or riders to the policy or policies above required, or by separate policies of insurance in amounts as follows to cover liability arising out of any auto (including owned, hired and non-owned autos) while on Site:
 - (1) Business Automobile Liability insurance to cover each automobile, truck, or other vehicle used in the performance of the Contract in an amount not less than \$5,000,000 per occurrence on account of injury or death.
 - (2) Property Damage Liability insurance to cover each automobile, truck or other vehicle used in the performance of the Contract in an amount not less than \$5,000,000 on any occurrence.
- c. The policy shall contain provisions whereby the insurance company agrees that ten (10) days prior to cancellation, change or reduction of the insurance afforded by the policy, with respect to the Contract, written notice will be mailed to the Port Authority.

B-17 ACCESS TO WORK AND PLACE OF MANUFACTURE

Port Authority staff and authorized representatives shall at all times have access to inspect the Work wherever it is in preparation, progress, being manufactured or fabricated and the Contractor shall arrange and provide proper facilities for such access and inspection to determine whether such Work is being done in accordance with the Contract.

B-18 STANDARDS AND SUBSTITUTIONS

- a. The type or make of any material, equipment, article, device, fixture or furnishing, or of any form of construction, named in these specifications, whether or not the words "or approved equal" are listed, the Port Authority shall consider "approved equal"

material substitutions on this Project. The Port Authority and the Engineer of Record will be required to approve/vet whether an item is a true "Approved Equal" and it is not guaranteed that a submission will be deemed an "Approved Equal".

- b. The use of any experimental or untried methods, or the use or installation of any experimental or untried materials or equipment or any combination of either or both, shall not be allowed. Each Bidder, or the Contractor if a Contract has been awarded, shall, if so required by the Port Authority, submit ample proof that the method of doing any of the Work has been successfully used for like work for a period of at least two years; or that the materials or equipment or any combination of either or both proposed to be used on, or furnished for the Work, is of a reliable make and is of a type that has been successfully used in practical service outside of the Bidder or the Contractor's facilities, for a period of not less than two years.

B-19 INSPECTION

- a. Inspectors as designated by the Port Authority shall be authorized to inspect all Work done and materials furnished. Such inspection may extend to all or any part of the Work, and to the preparation or manufacture of the materials to be used. In case of any dispute arising between the Contractor and the inspector as to materials furnished or the manner of performing the Work, the inspector shall have the authority to stop the use of material or suspend the Work until the question at issue can be referred to and decided by the Port Authority. The inspector shall not be authorized to revoke, alter, enlarge, relax or release any requirements of any specifications, nor to approve or accept any portion of the Work or to issue instructions contrary to the plans and specifications. The inspector shall not act as a foreman or perform other duties for the Contractor or interfere with the management of its Work. Any advice, which the inspector may give the Contractor, shall in no way be constructed as binding the Port Authority in any way or releasing the Contractor from the fulfillment of the terms of the Contract.
- b. The Contractor shall not be entitled to any claims for loss of time, damages or anticipated profit due to any time lost from suspension or rejection of any Work or from disputes with the Port Authority.

B-20 LAWS, PERMITS AND REGULATIONS

The Contractor shall comply with all applicable Laws and shall be responsible for securing at its own expense any and all licenses, permits and certificates of inspection required by law, or by the Contract Documents.

B-21 RESERVED

B-22 OTHER CONTRACTS

It is understood and agreed that the Contractor shall execute his Work in such a manner and in such order as will not interfere with work in progress and will permit the Port Authority to perform other work or to enter into other contracts for work and materials to be constructed or placed in, on or about the Work, with the least interference possible and with complete cooperation with the Port Authority and other contractors. The Port Authority shall decide all questions of priority among separate contractors.

B-23 PATENTS

The Contractor shall pay all royalties and license fees and shall hold and save the Port Authority and its officers, agents, servants and employees harmless from liability of any nature or kind,

including cost and expenses, for or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Port Authority unless otherwise specifically stipulated in the Contract Documents. In this respect the Contractor shall defend all suits or claims for infringement of any patent or license rights by counsel acceptable to Port Authority.

B-24 INDEPENDENT CONTRACTOR STATUS

The Contractor is and shall remain an independent contractor with respect to all services performed and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, tax withholding, unemployment insurance, workers' compensation or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Law which are measured by the wages, salaries, or other remuneration paid to persons employed by the Contractor on the Work and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under Law and the Contractor also agrees to indemnify and save harmless the Port Authority from any such contributions or taxes or liability therefore.

B-25 RESERVED

B-26 WAGES, WAGE SCALE, AND HOURS

Contractors shall use only the classifications and wage rates set forth in the United States Department of Labor (USDOL) wage decision found at website noted below on weekly certified payrolls submitted to the Port Authority. Additionally, please note that the wage modification in effect at the time of the project sale date, shall be used by all contractors.

This USDOL wage decision may be viewed, by accessing the United States Department of Labor (USDOL) website at:

<http://www.wdol.gov/>

This contract requires the payment of the total of the basic hourly rates plus the fringe benefits payments for each classification in accordance with the following regulations which by reference are made part of this contract:

- 1) The U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution.
- 2) Davis Bacon Act, 40 U.S.C. 3141-3148, or 23 U.S.C. 113

The failure to pay prevailing wages to all laborers and mechanics employed on this project, shall be considered a breach of contract. Such a failure may result in the termination of the contract and debarment.

The Contractor and all subcontractors shall pay all wages and fringe benefits by company check. All payroll records and canceled pay checks shall be maintained for at least three years after final acceptance as defined in section 109.12 of the Ohio Department of Transportation Construction and Materials Specifications. The Contractor's and all subcontractors payroll records and canceled pay checks shall be made available for inspection by the Department and the U.S. Department of Labor, upon request, anytime during the life of the contract, and for three years thereafter by the U.S. Department of Labor. Additionally, the Contractor and all subcontractors shall permit such representatives to interview any employees during working hours while the employee is on the job.

The wage and fringe rates determined for this project shall be posted by the Contractor in a prominent and accessible place on the project, field office, or equipment yard where they can be easily read by the workers.

The Contractor and all subcontractors shall submit to the Port Authority, certified payrolls each week beginning three weeks after the start of work. These payrolls shall be on a Form WH-347 or equivalent and shall show the following:

- 1) Employee name, address, classification, and hours worked.
- 2) The basic hourly and overtime rate paid, total pay, and the manner in which fringe benefit payments have been irrevocably made.
- 3) The project number and pay week dates.
- 4) Original signature of a company officer on the certification statement.

Additionally, a copy of the "Apprentice Certification" obtained from the Ohio State Apprenticeship Council, must accompany all certified payrolls submitted for all apprentices working on this project.

Please be aware that it is ultimately the responsibility of the Contractor to ensure that all laws relating to prevailing wages in the USDOL Regulations, Title 29, parts 1 and 5, are strictly adhered to by all subcontractors on the project.

If the Contractor or any subcontractor fails to comply with any of the provisions contained in this proposal note, the Department may terminate the contract, debar the Contractor or Subcontractor and/or withhold or suspend pay estimates after written notice and a reasonable opportunity to comply has been provided.

The applicable wage and fringe rates for this project are to be incorporated in their entirety as an attachment to the executed contract.

Upon completion of the Project, the Contractor and all subcontractors whom provided labor for this Project shall be required to submit an Affidavit of Compliance. This form is issued by the Ohio Department of Commerce (https://www.com.ohio.gov/documents/laws_Affidavit%20Of%20Contractor%20Compliance.pdf).

Work hours shall be coordinated with Port Authority.

B-27 STATE OR FEDERAL TAXES

- a. The Contract price or prices for the materials contained in the contract are subject to increase or decrease by the amount of any additional tax or reduction of tax, as the case may be, affecting such commodity imposed by or under authority of the Federal Government or the State of Ohio, which may be enacted after the Bid Opening Date and such changes shall continue in effect during the existence of such change in the taxes, provided, however, that in the event of any increase in cost, a claim shall be presented by the Contractor within thirty (30) days and provided that such claim is supported by evidence showing such additional tax, satisfactory to the counsel for the Port Authority. Reductions in taxes will be deducted from the contract price.
- b. The Port Authority is exempt from all sales, excise and transportation taxes, except State of Ohio gasoline tax. The price or prices bid, whether a unit price, lump sum price, lot price, or a trade discount from catalogue list prices, shall be exclusive of all such taxes and will be so construed.

B-28 LABOR AND MATERIAL MEN

- a. The Contractor shall promptly pay or satisfy proper claims of all persons who have performed labor or furnished material for the Contractor in the execution of the Contract, including those who have previously filed attested accounts of such claims with the Port Authority, and all bills, costs or claims of whatever kind which might in law or equity become a lien upon the Work or against the fund from which the same is to be paid or a charge against the Port Authority.
- b. The Port Authority may retain out of any moneys at any time due Contractor a sum sufficient to pay all Laborers, Subcontractors or Materialmen who have filed an attested account of such claim with the Port Authority within one hundred twenty days from the performance of last labor or the delivery of last materials, stating that any balance for said work or materials is still due and unpaid, which amount may be retained by the said Port Authority until satisfactory evidence is furnished to counsel for the Port Authority that said balance has been fully paid, and if said evidence is not furnished before the next estimate becoming due to the Contractor under the Contract, the Port Authority may pay said balance to the person claiming it and charge such payment to the Contractor as payment on the Contract, unless the Contractor shall have previously filed with the Port Authority written notice that such claim is in dispute. In the event of such dispute, the Port Authority will retain the amount until the claim has been adjusted or the money paid into court on proceedings in the nature of an interpleader. Notwithstanding any of the above Port Authority is permitted at any time to take all steps and actions authorized to it under state mechanics lien and similar or related statutes.

B-29 ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of the Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, any of the moneys due or to become due under the Contract, except by written consent of the Port Authority, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment contrary to these provisions shall be null and void and of no effect on the Port Authority. Any assignment, transfer, or conveyance permitted by the Port Authority in writing shall not be valid until the actual assignment, transfer or conveyance is filed in the office of the Port Authority.

B-30 SUBCONTRACTORS

- a. The Contract will be made pursuant to the bid submitted by the Contractor and in reliance upon the Contractor's qualifications and responsibility, therefore the Contractor shall not sublet nor shall any Subcontractor commence performance of any part of the Work without the previous written consent of the Port Authority. In making application for subletting any portion of the Work, the Contractor shall state in writing the portion of the Work which each Subcontractor is to do or the material which it is to furnish, its place of business, and such other information as may be required in order to ascertain whether such Subcontractor is responsible, reliable and able to perform the work or to furnish the materials as called for in the specifications. Subletting, if permitted, shall not relieve the Contractor, nor its surety of any of its obligations under the Contract. If at the time the bid is made the Contractor knows of parties it may identify as potential Subcontractors it shall list them as potential Subcontractors in the bid.
- b. Any subcontract for Work must conform to the requirements of the Contract.
- c. The Contractor shall be and remain solely responsible to the Port Authority for the acts and omissions of its Subcontractors and of such Subcontractors' agents. The Contractor shall promptly, upon request of the Port Authority file a conformed copy of the subcontract, as a condition precedent to the approval of a Subcontractor. The

Contractor and subcontractor jointly and severally agree that no obligation upon the Port Authority is thereby created to pay to, or see to the payment of any sums to any Subcontractor.

B-31 CHANGES OR MODIFICATIONS OF CONTRACT

When in the prosecution of any Work it becomes convenient, in the opinion of the Port Authority, to make alterations or modifications in the Contract, such alterations or modifications shall be within the general scope of the Work and shall be made in writing by the Port Authority, subject, however to authorization by its Board of Directors under law or Port Authority regulations or resolutions. The alteration or modification may either be a Change Order, Change Directive or Minor Change. If the alteration or modification the Contractor has been directed to perform does not involve an adjustment to the amount due under the Contract, or the time the Contractor has to complete the Work ("Minor Change"), then such alteration or modification shall immediately become binding on Contractor upon the written order of the Port Authority.

If the matter involves an adjustment to the amount due under the Contract, or the time for completion of the Work, then the written order received from Port Authority shall be binding on the Contractor as a Change Order, if the Contractor enters into a written change order agreeing to the change in the Work, the adjustment to the amount due under the Contract and/or adjustment to the time for completion of Work. The Port Authority shall negotiate with the Contractor prices for Change Order work if not already established in the Bid. These prices shall be comparable to prices that would have resulted from a competitive bid contract and will be determined in accordance with Section 109.05 of C&MS 2019.

A Port Authority Authorized Representative will measure the quantities of Work and calculate payments based on the method of measurement and basis of payment provisions provided in the Specifications. The Port Authority will keep a master list of quantities from which payment will be authorized and paid against. During the progression of work, at no time will quantities over and above those listed in the Project will be paid out unless a Change Order is authorized during the progression of work by the Port Authority. Upon Final Acceptance of the Project a final quantity Change Order shall be issued on the Project to modify the Contract for the actual quantities installed.

If a Change Order has not been signed the written order for the Port Authority shall become effective on the Contractor as a Change Directive which the Contractor shall be bound to do and the Contractor will be paid an amount based on unit prices stated in the Contract Documents or in the absence thereof based on actual cost incurred by the Contractor, as evidenced by detailed records kept by Contractor of all expenditures for the changed Work, plus reasonable overhead and profit. The Port Authority shall determine reasonable overhead and profit using C&MS 109.05C under Force Account work.

All amounts due Contractor for changes in the Work shall take into account savings realized by the Contractor. No such alterations shall be valid unless the price to be paid for the Work or material, or both, under the altered or modified Contract, shall have been authorized by the President or said Board where necessary. Authorized Representative is not authorized to change, modify or amend the Contract.

B-32 PORT AUTHORITY RIGHTS UPON CONTRACTOR'S DEFAULT

a. Termination of Contract

In addition to the rights Port Authority may otherwise have, the Port Authority shall have the right to terminate the Contractor's right to continue the Work on the Contract upon (1) the failure of the Contractor to begin on or within 14 days of the notice to proceed with physical preparation at the Site for the Work; (2) the failure of

the Contractor to begin the Work on or within 14 days of the notice to proceed; (3) the failure of the Contractor to cure any unexcused delay in performance within three days after written notice is given if it appears to the Port Authority that the Work has been so unreasonably delayed as to tend to indicate the likelihood of failure of completion within the time specified; (4) failure to replace any Work, material or equipment not meeting the Contract specifications within three days after receipt of written notice of the Contractor's failure to properly provide conforming Work, material or equipment; (5) failure to complete the Work by the Completion Date with any extensions which may have been granted; (6) any other default not cured by the Contractor on or within ten days of notice, and if the default is of the type that cannot be cured in that time period, then the Contractor has begun to cure said default and diligently and continuously pursues cure; or (7) if the Contractor shall become insolvent, or shall be adjudged as bankrupt, or shall make any assignment for the benefit of its creditors, or if a receiver of its property shall be appointed. The Port Authority's right to terminate the Contract shall be without prejudice to any other right or remedy, and Port Authority may enter upon the premises and take possession of all materials, tools and appliances thereon, and finish the Work by whatever method it may deem expedient.

b. Delivery of Material

The delivery of any material, equipment, or the performance of any labor hereunder which does not in all respects conform to the Contract, may be rejected and the Contractor shall be notified by the Port Authority of such rejection and the reason therefore, which notice shall be confirmed in writing. If the Contractor fails to effect immediate replacement of such rejected materials, equipment and labor with material, equipment and labor meeting the requirements of the order and of the Contract, the Port Authority may purchase material, equipment and hire labor of the character required under the order up to the amount rejected and the Contractor and its surety shall be liable to the Port Authority for any excess cost and expense occasioned the Port Authority thereby. The Port Authority shall have the right to suspend the whole or any part of the Work, when the Contractor is not doing the Work in accordance with the Contract. No extension of time for completion of the Work or claim for damages will be allowed by reason of such suspension.

c. Contractor's Liability for Damages

In case of such discontinuance of the employment of the Contractor, it shall not be entitled to receive any further payment under the Contract until the Work is wholly completed, at which time, if the unpaid balance of the amount to be paid under the Contract shall exceed the expenses incurred by the Port Authority in finishing the work, such excess shall be paid by the Port Authority to the Contractor, but if such expenses shall exceed such unpaid balance, the Contractor shall pay the difference to the Port Authority. If the right of the Contractor under the Contract is terminated, the Contractor shall only be paid for work actually performed and material incorporated into the project at the agreed to rate. The Contractor shall remain liable to Port Authority for any damages suffered by Port Authority regardless of the termination of the right to continue performing Work.

d. Rights of Port Authority in Case of Nonperformance:

If the Contractor shall refuse or neglect to supply a sufficient number of properly skilled Workmen, or materials of the proper quality, or shall fail in any respect to prosecute the Work or any part thereof with promptness and diligence, or fail in the

performance of any of its agreements, the Port Authority may, after 48 hours written notice to the Contractor, provide such labor or materials, and deduct the cost thereof from any monies then due or thereafter to become due to the Contractor under the Contract.

B-33 ACCEPTANCE OF PERFORMANCE

It shall be understood and agreed by the parties hereto that the Port Authority shall determine if the quality of the Work and the material and equipment furnished under the Contract is satisfactory.

B-34 GUARANTEE

- a. The Contractor guarantees that the Work done and all material used in the Project under Contract are in all respects new, first-class, and of the proper kind and quality necessary for the Work and the Work will be done in a good and workmanlike manner and in accordance with the Contract Documents. The Contractor guarantees that the improvement constructed will remain in good condition for and during the entire period of guarantee.
- b. The period of guarantee shall begin upon the date of Final Acceptance of the Work, and shall continue for one year thereafter or as otherwise provided in the Specifications and Supplemental Conditions.
- c. If at any time before or during said period of guarantee, any defects appear in the Work, or if any of the Work is not in accordance with the requirements of the Contract Documents, or for any other cause which is not attributed to unusual causes such as damage by others, or unusual casualty or natural disaster, all as determined by the Port Authority. Port Authority will notify the Contractor to rectify such defects or omissions, or to make the repairs so required.
- d. If the Contractor shall fail to begin to rectify such defects or omissions or to start such repairs within five (5) days from the date of such notification, or if such repair work is not made in a manner satisfactory to the Port Authority, the Port Authority shall have the right to purchase any necessary materials, rent any necessary tools and equipment and to employ such other person or persons as it may deem proper to make such repairs, and to recover said amounts from the Contractor by paying the expense thereof out of the monies then due, or which may thereafter become due to the Contractor, or out of the amount retained for that purpose by the Port Authority.
- e. In case of an emergency, as deemed by the Port Authority, the Port Authority shall have the right to purchase any necessary materials, rent any necessary tools and equipment and to employ such other person or persons as it may deem proper to make such repairs, and to recover the expenses from the Contractor and/or its sureties including paying the expense thereof out of the moneys then due, or which may thereafter become due to the Contractor, or out of the amount retained for that purpose by the Port Authority.
- f. If any retained or unpaid moneys are not sufficient to meet such expense, the Contractor and/or its sureties shall pay the difference immediately upon request.
- g. If it is necessary to remove any part of the Work to repair defects in materials or workmanship, or if any part of the Work becomes damaged due to such rectification or repairing, all such Work shall be replaced or repaired, all to the satisfaction of the Port Authority. The guarantee provisions shall also apply to all rectified or repaired work.

B-35 TERMS OF PAYMENT

- a. The Contractor will make current requests for payment using the AIA Document G702, "Application and Certificate for Payment", not more than once each month ("Payment Request(s)"), and submit them to the Port Authority for approval. All Payment Requests shall be dated the last working day of the month and shall be submitted to the Port Authority by the tenth day of the following month. Signed and notarized payment requests and associated back up shall be sent electronically to the Port Authority's accounting department at the following email address: Accounting@PortofCleveland.com. All Payment Requests shall include copies of certified payroll, a partial waiver of lien and claims from the Contractor, updated DBE reporting, and a lien waiver from each subcontractor listed on the previous Payment Request (collectively the "Lien Waivers"). Prior to submission of the monthly payment application, a pencil copy Payment Request shall be submitted by the Contractor to the resident engineer in charge of the Project for approval/consideration. The Payment Request shall cover installed materials, the amount and value of Work performed in accordance with the Contract during the preceding payment period, and a complete list of all subcontractors hired by the Contractor that performed work on the project during the period of time covered by the Payment Request. At the discretion of the Port Authority, allowances may be made for nonperishable materials, which are to be incorporated into the Work, when delivered and properly stored upon the Site. Upon approval of the Contractor's Payment Request, the Port Authority will make estimates in writing, once each payment period, of the material in place complete, and the amount of Work performed, all in accordance with the Contract. Upon approval of the Payment Request and the Lien Waivers by the Port Authority, the Contractor shall be paid the amount of each such estimate and less all prior payments less a deduction of ten percent (10%) which shall be retained until Final Acceptance of all Work. Retainage will be held on the total value of the Project until Final Acceptance has been issued, this includes the value of permanent materials.
- b. Contractor shall not, directly or indirectly, create, incur, assume or suffer to be created by it or by any subcontractor, laborer, materialman or other suppliers of goods, services, labor or materials, any claim, lien, charge or encumbrance against the funds for the public improvement or any part thereof or upon the project. Furthermore, Contractor shall promptly pay or discharge, and discharge of record any such claim, lien or encumbrance for labor, materials, supplies or other charges, that if unpaid, might be or become a lien against the funds for the public improvement or any component of the public improvement.
- c. Upon the Final Acceptance of the Work, the Port Authority shall pay the Contractor the whole amount of the money then due the said Contractor under the contract.
- d. The payment of the moneys provided for herein shall constitute a full and complete discharge of all the duties and obligations of the Port Authority under the Contract.

B-36 NO WAIVER OF LEGAL RIGHTS

Neither acceptance of nor payment for the Work, or any part of the Work, nor any extensions of time, nor any possession taken by the Port Authority shall operate as a waiver of any portion of the Contract, nor shall a waiver of any breach of the Contract be held to be a waiver of any other or subsequent breach.

B-37 INDEMNITY CLAUSE

The Contractor shall indemnify, keep and save harmless the Port Authority and its respective

Directors, agents and employees against all suits or claims that may be based upon any injury to persons or property that may occur, or that may be alleged to have occurred in the course of the performance of the Contract by the Contractor, or as a result of the performance of the Contract by the Contractor, whether or not it shall be claimed that the injury was caused through a negligent act or omission of the Contractor or its agents, and whether or not the persons injured or whose property was damaged were third parties, employees of the Contractor or employees of an authorized Subcontractor; and the Contractor shall at its own expense defend the Port Authority in all litigation through counsel of Port Authority's choice, pay all attorneys' fees and all costs and other expenses arising out of the litigation or claim or incurred in connection therewith; and shall, at its own expense, satisfy and cause to be discharged such judgments as may be obtained against the Port Authority, or any of its officers, agents or employees.

B-38 RESERVED

B-39 RESERVED

B-40 SUSPENSION OF WORK FOR THE CONVENIENCE OF THE PORT AUTHORITY

The Port Authority may by written order direct the Contractor to suspend all or any part of the Work for such period of time as may be determined by the Port Authority to be necessary or desirable for the convenience of the Port Authority. Any extension of time to be made because of such order to suspend Work shall be made in accordance with Section B-6 of the General Conditions. Any claim by the Contractor for an adjustment hereunder must be asserted within 30 days from the date such suspension is ordered.

B-41 SUPERVISION BY AUTHORIZED REPRESENTATIVE OR PRESIDENT

- a. President, and unless it expressly appears otherwise in this document, Authorized Representative, shall be the sole authorized individuals to act for or on behalf of Port Authority, unless otherwise appearing herein.
- b. Only the President shall have the authority to suspend Work (unless it is an emergency in which case Authorized Representative is authorized to act), terminate the Contract, terminate Work under the Contract, modify or amend the Contract, or waive compliance with any term of the Contract.
- c. The President shall have authority to stop the work at any time whenever such stoppage may be necessary to insure the proper execution of the Contract. The President shall have the right to order the removal and replacement of Work failing to meet the requirements of the Contract.
- d. It shall be the responsibility of the Authorized Representative to make written recommendations to the Port Authority in regard to all claims and other matters relating to the execution and progress of the Work and interpretations of the Contract Documents. The decisions on all such shall be made by the President, or his representative.
- e. Any notice to be supplied the Port shall be addressed to the Port Authority offices to the attention of the Authorized Representative unless it is a matter that only the President can act upon in which event it shall be to the attention of President with a copy to the Authorized Representative.

B-42 DUST & MATERIAL TRACKING ONTO PUBLIC RIGHT OF WAY

Whenever work of any kind creates nuisance or harmful dust or operations track material out and onto the public right of way, equipment for the complete protection of all personnel and property and the public right of way shall be installed, maintained and effectively operated by the Contractor. All

B-43 TEMPORARY POWER AND LIGHT

Contractor shall be responsible for any and all temporary power needs for the execution of Work. No overnight or special lighting shall be permitted other than FAA marker lighting on equipment, as required.

B-44 HEAT AND COMPRESSOR AIR

The Contractor shall supply all heat for such periods of time and at such temperatures as required for the proper protection and execution of the Work. The Contractor shall supply all compressed air for construction purposes.

B-45 HANDLING AND PROTECTION OF MATERIAL

If requested by the Port Authority the planned method of moving or placing of materials shall be submitted for approval. This approval shall not relieve the Contractor of responsibility for the safety of the material and personnel.

The Contractor shall be responsible for unloading, uncrating and handling all equipment and material to be erected by it, whether furnished by the Contractor or others. The salvage materials and scrap resulting from such Work shall be disposed of by the Contractor in the manner prescribed, for removal of rubbish, unless otherwise directed by the Port Authority.

All material scraped from the roadway network, in preparation for resurfacing shall be disposed of within the mechanical basins on CDF 12. This material shall be deposited into these cells in a manner which promotes positive drainage and does not trap water. Any haul routes used by the Contractor which are not to be resurfaced must be maintained and restored to be pre-project conditions by the Contractor.

B-46 CONTRACTOR'S OFFICE

If an office is required to be maintained at the Site per the Specifications and Supplemental Conditions, the Contractor shall maintain an office at the Site during the construction period at which it or its authorized agent shall be present at all times while the Work is in progress. If a trailer will be brought on site, it must be maintained/located directly adjacent to the site security trailer near the access gate. No office trailers shall be placed out on the CDF's.

B-47 USE OF PREMISES AND PARKING

The Contractor shall confine its apparatus, storage of materials and the operations of its workmen to the limits arranged with the Port Authority and highlighted in the Construction Safety Phasing Plan and as coordinated with our Terminal Operator.

All personal vehicles must be parked at the entrance of the Facility near Gate 18. Personal vehicles are not permitted out on the CDFs.

B-48 CONTRACTOR'S SUPERINTENDENCE

The Contractor shall at all times have a competent superintendent in charge of the Work, who is thoroughly familiar with the class of work covered by the specifications. The superintendent

shall not be transferred or relieved without one week's prior written notice to the Port Authority.

The Contractor's superintendent shall represent the Contractor and all instructions given to him shall be binding as if given to the Contractor. He shall have authority to execute such instructions.

The Contractor's superintendent shall at all times cooperate with the Port Authority and other contractors in all matters, including labor relations.

The President may direct that the superintendent be replaced if his work is not satisfactory.

B-49 LABORRELATIONS

- a. The Contractor shall be responsible for its own labor relations with any trade or union represented among its employees, and it shall negotiate and seek to adjust all disputes between itself and its employees or anyone representing such employees. The same responsibility shall extend to the Subcontractors.
- b. If any dispute (other than disputes affecting wage rates, hours or conditions of employment) arises with any person discharged for cause by one Contractor or Subcontractor may not be re-employed on the job site by another, without the Port Authority's approval. trade or a union which, in the opinion of the Port Authority, affects more than a single Contractor or which threatens, unless resolved, to delay the Work generally or to postpone the completion of the Work beyond the contemplated or scheduled completion date, then the Port Authority shall have the right to intervene and to attempt to effect a solution or adjustment of such dispute which will permit the uninterrupted continuation of the Work.
- c. The Port Authority, may by written notice, request the Contractor dismiss forthwith any superintendent, foreman or watchman of the Contractor or its Subcontractor, that the Port Authority may deem incompetent, or careless or a hindrance to the proper completion of the Work. The Contractor shall comply with such notice as promptly as practicable without detriment to the Work.
- d. Any additional cost or expense incurred by any Contractor under the provisions of the preceding paragraphs shall not form the basis of any claim for an extra, or for any compensation over and above, or in addition to, the contract price previously agreed upon between such Contractor and the Port Authority.

B-50 SCHEDULES, PROGRESS REPORTS, AND WORK COORDINATION

In general, it is the intent to allow the Contractor to choose its own methods and procedures consistent with good practice. However, all coordination and scheduling of Work and all other Contractors will be done in consultation with the Port Authority and other critical stakeholders including Kurtz Brothers and Burke Lakefront Airport.

The Contractor shall have its trades afford all other trades under the control of other Contractors every reasonable opportunity for the installation of their work, as well as for the storage of their material and equipment.

B-51 SAFEGUARDS IN CONSTRUCTION

The Contractor shall provide and maintain as directed by the Port Authority at its own cost and expense, adequate, safe and sufficient walkways, platforms, scaffolds, barriers, handrails, ladders, hoists, alarms, supports of excavation, safety signs and all necessary and proper equipment, apparatus and appliances useful in carrying on the Work and to make the site and

free from avoidable danger, and to comply with all requirements of public authorities with respect thereto.

When requested by the Port Authority the Contractor shall provide, at no extra charge, scaffolds or ladders in place as may be required by the Port Authority or its inspectors for examination of the Work in progress.

The Contractor in all its operations shall be governed by codes in general acceptance throughout the construction industry and perform all work in accordance with same.

The Contractor shall take all reasonable steps and precautions to protect health and minimize danger from all hazards to life and property and shall make all reports and permit all inspections deemed necessary by the Port Authority.

B-52 CUTTING AND PATCHING

The Contractor shall not do any cutting and patching in connection with the Work unless otherwise specified or directed.

B-53 MANUFACTURERS' STANDARD CLAUSES

The applicable items of these General Conditions or the Specification and Supplemental Conditions shall control in case of any variance between any provision or provisions thereof and any provision or provisions contained in any standard sections of manufacturers' proposals, unless otherwise agreed to by both parties and so stated in the Contract.

B-54 DISPUTE RESOLUTION

The inclusion of the Dispute Resolution clause in this Contract does not relieve the Contractor's Mitigation and Notice requirements of 108.2F of the C&MS. Whenever an issue is elevated to a dispute, the parties shall exhaust the Port Authority's Dispute Resolution and Administrative Claim process as set forth below prior to filing an action in any court of competent jurisdiction. If the Port Authority's Dispute Resolution and Administrative Claim process is exhausted, prior to filing an action in any court of competent jurisdiction, the claim shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The following procedures do not compromise the Contractor's right to seek relief in any court of competent jurisdiction.

All parties to the dispute must adhere to the Dispute Resolution and Administrative Claim process. Do not contact Port Authority personnel who are to be involved in a Step 2 or Step 3 review until a decision has been issued by the previous tier. Port Authority personnel involved in Step 2 or Step 3 reviews will not consider a dispute until the previous tier has properly reviewed the dispute and issued a decision.

Failure to meet any of the timeframes outlined below or to request an extension may terminate further review of the dispute and may serve as a waiver of the Contractor's right to file a claim.

Disputes and claims by subcontractors and suppliers may be pursued by the Contractor on behalf of subcontractors or suppliers. Disputes and claims by subcontractors and suppliers against the Port Authority but not supported by the Contractor will not be reviewed by the Port Authority. Disputes and claims of subcontractors and suppliers against the Contractor will not be reviewed by the Port Authority.

Contractor will continue with all work, including that which is in dispute. The Port Authority will continue to pay for work not in dispute.

The Port Authority will not make the adjustments allowed by 104.02.B, 104.02.C, and 104.02.D of the 2019 ODOT Construction and Materials Specifications if the Contractor did not give notice as specified above. This provision does not apply to adjustments provided in Table 104.02-2 of the 2019 ODOT CMS.

Step 1 (On-Site Determination): An Authorized Representative of the Port Authority will meet with the Contractor's superintendent within two (2) working days of receipt of the Contractor Written Early Notice set forth in 108.02.F of the 2019 ODOT CMS. They will review all pertinent information and contract provisions and negotiate in an effort to reach a resolution according to the Contract Documents. The Port Authority will issue a written decision of Step 1 within fourteen (14) calendar days of the meeting and receipt of substantiating documentation. If the dispute is not resolved, either abandon or escalate the dispute to Step 2.

Step 2 (Port Authority Dispute Resolution Committee): The Port Authority Dispute Resolution Committee will be responsible for hearing and deciding disputes at the Step 2 level. The committee will consist of the Port Authority's CFO, CCO, and President/CEO or designees (other than the project personnel involved).

Within seven (7) calendar days of receipt of the Step 1 decision, submit a written request for a Step 2 meeting to the Port Authority's Authorized Representative. The Port Authority's Authorized Representative will assign the dispute a dispute number. Within fourteen (14) calendar days of receipt of the request for a Step 2 meeting, submit the dispute documentation as follows:

- a) Submit three (3) complete copies of the documentation of the dispute to the Port Authority's Authorized Representative.
- b) Identify the dispute on a cover page by county, project number, Contractor name, subcontractor or supplier (if involved in the dispute), and dispute number.
- c) Clearly identify each item for which additional compensation and/or time is requested.
- d) Provide a detailed narrative of the disputed work or project circumstance at issue. Include the dates of the disputed work and the date of early notice.
- e) Reference the applicable provisions of the plans, specifications, proposal, or other contract documents in dispute. Include copies of the cited provisions in the dispute documentation.
- f) Include the dollar amount of additional compensation and length of contract time extension requested.
- g) Include supporting documents for the requested compensation stated in letter (f) above.
- h) Provide a detailed schedule analysis for any dispute involving additional contract time, actual or constructive acceleration, or delay damages. At a minimum, this schedule analysis must include the Schedule Update immediately preceding the occurrence of the circumstance alleged to have caused delay and must comply with accepted industry practices. Failure to submit the required schedule analysis will result in the denial of that portion of the Contractor's request.
- i) Include copies of relevant correspondence and other pertinent documents.

Within fourteen (14) calendar days of receipt of the Contractor's dispute documentation, the committee will conduct the Step 2 meeting with the Contractor personnel who are authorized to resolve the dispute. The committee will issue a written decision of Step 2 within fourteen (14) calendar days of the meeting. If the dispute is not resolved, either abandon or escalate the dispute to Step 3.

Step 3 Hired Neutral Third Party (Mediation): Submit a written Notice of Intent to File a Claim to the Port Authority's Authorized Representative, who will serve as the Dispute Resolution Coordinator (DRC), within fourteen (14) calendar days of receipt of the Step 2 decision.

The dispute becomes a claim when the DRC receives the Notice of Intent to File a Claim.

Submit six (6) complete copies of the claim documentation to the DRC within thirty (30) calendar days of receipt of the Notice of Intent to File a Claim. This timeframe may be extended upon mutual agreement of the parties and with approval of the DRC.

In addition to the documentation submitted at Step 2:

- a) Enhance the narrative to include sufficient description and information to enable understanding by a third party who has no knowledge of the dispute or familiarity with the project.
- b) Certify the claim in writing and under oath using the following certification:

"I, (Name and Title of an Officer of the Contractor) certify that this claim is made in good faith, that all supporting data is accurate and complete to the best of my knowledge and belief, and that the claim amount accurately reflects the contract amendment for which (Contractor Company name) believes the Port Authority is liable."

Sign and date this claim certification and have the signature notarized pursuant to the laws of the State of Ohio. The date the DRC receives the certified claim documentation is the date of the Port Authority's Receipt of the Certified Claim for the purpose of the calculation of interest as defined in 102.02.G.4 of the 2019 ODOT CMS.

- c) An overview of the project.
- d) Response to each argument set forth by the Contractor.
- e) Any counterclaims, accompanied by supporting documentation, Port Authority wishes to assert.

The Port Authority's Authorized Representative will then choose Mediation in the manner in which those methods are practiced by the Port Authority's Authorized Representative and allowed by law. The DRC will coordinate the agreement of the parties to the Mediation, and the selection of a Mediator. The fees of the Mediator will be shared equally between the Port Authority and the Contractor. The DRC will obtain a written agreement, signed by both parties, that establishes the Mediation process. The Mediator will have complete control of the claim upon execution of the Mediation agreement.

The decision of the Mediator is the final step of the Port Authority's Dispute Resolution Process. The decision may be appealed by the Port Authority who is not bound by any offers of settlement or findings of entitlement made during Steps 1, 2, and 3 of the Dispute Resolution Process.

Cleveland-Cuyahoga County Port Authority

BID FORMS

**SEE ATTACHED BID
FORM**

PROJECT BID FORM

**Sediment Processing & Management Facility
CDFs 9 & 12
2021 General Site Maintenance Project**



ITEM	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
1	HEALTH & SAFETY /MOB/DEMOB/HOUSEKEEPING/GENERAL CONDITIONS COMPLETE	1	LS		
2	SITE OPERATOR/STOCKPILE ROADWAY DRAINAGE IMPROVEMENTS	1	LS		
3	CDF 12 WATER HANDLING POND 2 REGRADING	1	LS		
4	EXISTING OUTLET WEIR STRUCTURE CLEANING & 30" CMP REPAIR/RESTORE	1	LS		
5	EXISTING SITE OPERATOR/CDF 12 POND 2 ROADWAY RECONSTRUCTION	1	LS		
6	CDF 9 SLUICEWAY HAUL ROAD RESTORATION	1	LS		
7	CDF 9 SLUICEWAY OFFLOADING AREA IMPROVEMENT (REV. SCOPE HOLD 592.5)	1	LS		
8	OPERABLE WEIR STRUCTURE RE-ARMORING (3 EA)	1	LS		
9	SLUICEWAY OUTLET PIPES IMPROVEMENTS	1	LS		
10	MAIN ENTRANCE ROADWAY SURFACE MAINTENANCE ONLY (PINK/RED HATCH REPLACEMENT SCOPE)	1	LS		
11	OVERALL SITE DEBRIS REMOVAL	1	LS		

TOTAL PROJECT COST BASE BID: _____

ADD ALTERNATES					
12	ADD ALTERNATE #1 - CDF 9 SLUICEWAY WEIR STRUCTURES HARDENING	4	EA		
13	ADD ALTERNATE #2 - REESTABLISH EROSION PROTECTION NEAR CDF 9 SLUICEWAY OFFLOADING AREA (WEST HEADWALLS & WRAP)	1	LS		

TOTAL COST ADD ALTERNATES: _____

**SEDIMENT PROCESSING MANAGEMENT FACILITY
CDFs 9 12
2021 GENERAL SITE MAINTENANCE PROJECT**

BID FORM CONT.

Please provide a list of all major Subcontractors, Scope of Work, Estimated Contract Dollar Value, & Past Project Experience:

<u>Company</u>	<u>Scope of Work</u>	<u>Estimated Contract Dollar Value</u>	<u>Past Project Experience & ODOT Prequalifications</u>
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BIDDER:

Signature: _____

Title: _____

Company: _____

Address: _____

City/State/Zip
Code: _____

Phone: _____

E-Mail: _____

ADDITIONAL BID INFORMATION & QUESTIONS:

- 1.) Does General Contractor Have Experience Working on Similar Types of Projects? **YES / NO**
* REQUIRED- Please supply experience w/ client reference contact information.

- 2.) Has the Contractor reviewed and familiarized themselves with the site access, security, and safety requirements? **YES / NO**

- 3.) Please confirm the Contractor reviewed and understands the Construction Safety Phasing Plan on file w/ BKL & FAA. **YES / NO**

- 4.) Please confirm the Project was estimated using Davis Bacon prevailing wage rates. **YES / NO**

- 5.) Do you have experience working with the Cleveland-Cuyahoga County Port Authority? **YES / NO**

- 6.) Do you have experience working on sites with elevated/saturated ground water conditions? **YES / NO**

- 7.) Total Estimated MBE/FBE Participation Percentage: _____

- 8.) Contractor certifies no Unresolved Findings for Recovery, Tax Delinquencies, or Felony Convictions. **YES / NO**

- 9.) Please provide completion deadline for the Project:
FINAL COMPLETION: _____

- 10.) I acknowledge receipt of the following addenda (if any): 1 2 3 4 5

**SEDIMENT PROCESSING MANAGEMENT FACILITY
CDFs 9 12
2021 GENERAL SITE MAINTENANCE PROJECT**

BID FORM CONT.

AGREEMENT

2021 Sediment Processing & Management Facility General Maintenance Project

THE CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY ("Port Authority"), a body corporate and politic and port authority organized and operating pursuant to Chapter 4582.01 et seq. of the Ohio Revised Code, hereby agrees with _____ ("Contractor"), an Ohio corporation, that Contractor will perform the work described below for the price and upon the terms and conditions hereinafter set forth.

The aforementioned Port Authority and Contractor, in consideration of the payment, covenants and conditions hereinafter mentioned, hereby agree as follows:

1. PROJECT

The purpose of the Agreement is to establish the terms and conditions whereby the Contractor agrees to perform and accomplish the following:

2021 Sediment Processing & Management Facility General Maintenance Project

The successful Bidder will perform the work outlined in the Contract Documents. The work includes the rehabilitation of the existing Sediment Processing & Management Facility's ("SPMF") compacted aggregate roadway network, weir structure maintenance, and other general site maintenance activities.

2. CONTRACT DOCUMENTS

The Contract between Port Authority and Contractor consists of this agreement and the following documents ("Contract Documents") which are incorporated by reference:

- (1) All provisions required by law or resolution to be inserted in the Contract, whether actually inserted or not.
- (2) The Resolution of the Port Authority awarding the Contract.
- (3) Amendments to the Contract.
- (4) The Form Contract as completed and executed.
- (5) All Addenda issued by the Port Authority prior to Bid Submission.
- (6) Project Specifications and Supplemental General Conditions.
- (7) General Conditions.
- (8) Instruction to Bidders.
- (9) The Contract Drawings.
- (10) Construction Safety Phasing Plan & FAA Airspace Determination
- (11) Ohio Department of Transportation 2019 Construction & Material Specifications
- (12) The Resolution authorizing the making of the public improvement.
- (13) All required Policies of Insurance.
- (14) The Bid Affidavit of Non-Collusion.
- (15) The Bid.
- (16) City of Cleveland Division of Air Quality Permit
- (17) OEPA NPDES Permit

3. TIME OF COMPLETION

The Contractor acknowledges that TIME IS OF THE ESSENCE in this Agreement and that the work contemplated in the Contract Documents will be completed in accordance with the following project delivery milestones:

Final Completion: September 30th, 2021

4. PAYMENT

The Port Authority agrees to pay the Contractor an amount not to exceed \$,XXX,XXX.00. The total contract price is for all labor, overhead, profit, supervision, materials and miscellaneous work requirements necessary for completion of the work.

5. NOTICES

All notices permitted or requested to be given hereunder shall be delivered or mailed to:

Cleveland-Cuyahoga County Port Authority
1100 West Ninth Street, Suite 300
Cleveland, OH 44113
ATTN: Nicholas A. LaPointe

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed hereto by a duly authorized officer, as of this ____ day of _____, 2021.

**CLEVELAND-CUYAHOGACOUNTY
PORT AUTHORITY**

By: _____
Its: President

TBD

By: _____
Its: President

SUBMIT COPY w/ BID
DISCLOSURE OF PERSONAL PROPERTY TAXES

STATE OF OHIO

COUNTY OF CUYAHOGA

The undersigned, being first duly cautioned and sworn, says that:

1. He/She is the _____ of _____ who made a bid for an improvement project or for the purchase of services and supplies for the Cleveland-Cuyahoga County Port Authority, involving the competitive bid process;
2. He/She is familiar with RC 5719.042, copies of which are available in the offices of the Cleveland-Cuyahoga County Port Authority, and that he/she submits to the Cleveland-Cuyahoga County Port Authority this statement under oath, that as the person with whom the contract is to be made was not charged at the time the bid was submitted with any delinquent personal property taxes on the general tax list of personal property of any county in which the Cleveland-Cuyahoga County Port Authority has territory or that such person was charged with delinquent personal property taxes on any such tax list.
3. This statement sets forth in full, the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon as specified by RC 5719.042.
4. If this statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall, with the permission of the taxpayer, which is hereby given, be transmitted by the Cleveland-Cuyahoga County Port Authority to the County Treasurer with thirty (30) days of the date this statement was submitted.
5. A copy of the statement shall also be incorporated into the contract between the Cleveland-Cuyahoga County Port Authority and the undersigned, and no payment shall be made with respect to any contract to which RC 5719.042 applies unless such statement has been so incorporated as a part thereof.

By _____

Title _____

Ohio Personal Property Taxes

Exhibit A

(Complete if taxes are owed)

NON COLLUSION AFFIDAVIT

SUBMIT COPY w/ BID

STATE OF OHIO)
)SS
CUYAHOGACOUNTY)

AFFIDAVIT

_____ being first duly sworn deposes and says:

Individual only: That he is an individual doing business under the name of _____ at _____ in the City of _____, State of _____.

Partnership only: That he is the duly authorized representative of a partnership doing business under the name of _____ in the City of _____, State of _____.

Corporation only: That he is the duly authorized, qualified and acting _____ of _____, a corporation organized and existing under the laws of the State of _____; and that he, said partnership or said corporation, is filing herewith a bid to the Cleveland-Cuyahoga County Port Authority in conformity with the foregoing specifications;

Individual only: Affiant further says that the following is a complete and accurate list of the names and addresses of all persons interested in said proposed contact:

Affiant further says that he is represented by the following attorneys:

and is also represented by the following resident agents in the county of Cuyahoga:

Partnership only: Affiant further says that the following is a complete and accurate list of the names and addresses of the members of said partnership:

Affiant further says that said partnership is represented by the following attorneys: _____ and is also represented by the following resident agents in the County of Cuyahoga:

Corporation only: Affiant further says that the following is a complete and accurate list of the officers, directors and attorneys of said corporation:

- President
 - Vice President
 - Secretary
 - Treasurer
 - Cuyahoga County Manager or Agent
 - Attorneys
- Directors:

And that the following officers are duly authorized to execute contracts on behalf of said corporation:

Affiant further says that the bid filed herewith is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such bid is genuine and not collusive or sham; that said bidder has not, directly or indirectly, induced or solicited any other bidder to put in a false or sham bid, and has not, directly or indirectly, colluded, conspired, connived or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that in accordance with Title 23 United States Code, Section 112 and Ohio Revised Code, Chapter 1331 et. seq; and Sections 2921.11 and 2921.13, the bidder hereby states, under penalty of perjury and under other such penalties as the law provides, that he or his agents or employees have not entered either directly or indirectly into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal. Execution of this proposal on the signature portion thereof shall constitute also signature of this Non-Collusion Affidavit as permitted by title 28 United States Code, Section 1746; that said bidder has not in any manner, directly or indirectly sought by agreement, communication or conference with anyone to fix the bid price of said bidder or of any other bidder, or to fix any overhead, profit, or cost element of such bid price or that of any other bidder, or to secure any advantage against the Cleveland-Cuyahoga County Port Authority or anyone interested in the proposed contract; that all statements contained in such bid are true; that said bidder has not, directly or indirectly, submitted his bid price or any break-down thereof or the contents thereof, or divulged information or data relative thereto, or paid or agreed to pay, directly or indirectly, any money, or other valuable consideration for assistance or aid rendered or to be rendered in procuring or attempting to procure the contract above referred to, to any corporation, partnership, company, association, organization, or to any member or agent thereof, or to any other individual, except to such person or persons as herein above disclosed to have a partnership or other financial interest with said bidder in his general business; and further that said bidder will not pay or agree to pay, directly or indirectly, any money or other valuable consideration to any corporation, partnership, company, association, organization or to any member or agent thereof, or to any other individual, for aid or assistance in securing contract above referred to in the event the same is awarded to

(name of individual, partnership or corporation)

Further affiant saith not.

(Sign Here) _____

Sworn to before me and subscribed in my presence this _____ day of _____, A.D. 2021.

Notary Public

REPORTING BID RIGGING

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.